

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# No. 77-1131

B  
P85

*To be argued by:* ALAN M. DERSHOWITZ.

## United States Court of Appeals for the Second Circuit.

UNITED STATES OF AMERICA,  
APPELLEE,

v.

ROBERT P. MARCHAND, JR.,  
APPELLANT.

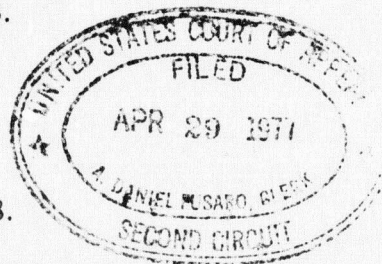
ON APPEAL FROM A JUDGMENT OF THE  
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT.

Appendix to Brief for the Defendant-Appellant.  
Volume I.

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210 2 1006

MARCHAND, ROBERT

07 22 / 76

51

1

21:846 Consp. to poss/dist. drugs. (1) 1  
 21:841; 18:2 Poss/dist. Sch. I drug (2) 1

## II. KEY DATES &amp; INTERVALS

| ARREST or          | INDICTMENT                              | X                                                                         | ARRAIGNMENT                                                                                             | TRIAL                                | SENTENCE                                                                                     |
|--------------------|-----------------------------------------|---------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|--------------------------------------|----------------------------------------------------------------------------------------------|
| U.S. Custody Began | High Risk Date                          | Information <input type="checkbox"/>                                      | Trial Set For                                                                                           | Voir Dire <input type="checkbox"/>   | Disposition of Charges                                                                       |
| Summons Served     | Indict. Waived <input type="checkbox"/> | 7-22-76                                                                   | 9-17-76                                                                                                 | Trial Began <input type="checkbox"/> | <input type="checkbox"/> Convicted <input type="checkbox"/> On All Charge                    |
| First Appearance   | In Charging District                    | Superseding <input type="checkbox"/> Indict/Info <input type="checkbox"/> | 1st Plea <input checked="" type="checkbox"/> NG <input type="checkbox"/> G <input type="checkbox"/> NOL | Trial Ended <input type="checkbox"/> | <input type="checkbox"/> Acquitted <input type="checkbox"/> On Lesser Offenses               |
|                    |                                         |                                                                           | Final Plea <input type="checkbox"/> NG <input type="checkbox"/> G <input type="checkbox"/> NOL          |                                      | <input type="checkbox"/> Dismissed <input type="checkbox"/> WOP <input type="checkbox"/> WOP |
|                    |                                         |                                                                           |                                                                                                         |                                      | <input type="checkbox"/> On Government Motion                                                |

Jacobson

X

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Duncan F. Kilmartin, Esq. (334-7386)  
 22 3rd. St., Newport, Vt. 05855

As. or rec'd. Notice of Appeal 2-23-77

1976

- 1 July 22 Filed Indictment.
- " " " Record of Grand Jurors concurring.
- " " Issued Warrant for Arrest.
- 2 Sept 10 Filed Notice of Appearance of Oteri & Weinberg, Esqs. 2 7-22-76 M
- 3 " 13 Filed Papers from Magistrate proceedings in So. Dist. of Florida, together with docket entries.
- 4 " 17 Mailed notice, Arraig. sch. 9-17-76, 11:00 AM, Rutland.
- 5 " " Filed Waiver of Defendant's Presence.
- 5 " " Filed Government's Motion to Dismiss Count 1 and Memorandum in Support.
- 6 " " Filed Warrant for Arrest of Defendant - - Returned 2 9-17-76 M S
- " " Served.
- " " In open Court before Judge Holden. Jill Jacobson, Asst. U. S. Attorney; Martin Weinburg, Esq. and Richard White, Esq., Attorneys for Defendant.
- " " Defendant present in Court with his attorneys, Martin Weinburg, Esq. and Richard White, for arraignment.

A. I.



| DATE     | 76-51-1<br>DOCUMENT NO. | IV. PROCEEDINGS (CONTINUED)<br>U.S.A. vs. ROBERT MARCHAND                                                                                                                       | PAGE TWO | V. EXCLUDABLE DELAY         |                          |               |              |
|----------|-------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|-----------------------------|--------------------------|---------------|--------------|
|          |                         |                                                                                                                                                                                 |          | Interd.<br>Detention<br>(a) | Search<br>Seizure<br>(b) | Arrest<br>(c) | Other<br>(d) |
| 1976     |                         |                                                                                                                                                                                 |          |                             |                          |               |              |
| Sept. 17 |                         | Court makes inquiries of Defendant.                                                                                                                                             |          |                             |                          |               |              |
| " "      |                         | Hearing on Government's Motion to Dismiss Count 1.                                                                                                                              |          |                             |                          |               |              |
| " "      |                         | Statements made to Court by Ms. Jacobson; followed<br>by Mr. Weinburg, in opposition.                                                                                           |          |                             |                          |               |              |
| " "      |                         | ORDERED: Motion granted. Count 1 dismissed.                                                                                                                                     |          |                             |                          |               |              |
| " "      |                         | Defendant waived reading of Count 2 of the indictment,<br>was arraigned and plead not guilty to Count<br>2 of the indictment.                                                   |          |                             |                          |               |              |
| " "      |                         | ORDERED: Bail previously set, continued.                                                                                                                                        |          |                             |                          |               |              |
| " "      |                         | ORDERED: As a condition of bail, defendant required<br>to notify his Vermont counsel of his where-<br>abouts if required to leave his home for a<br>period longer than one day. |          |                             |                          |               |              |
| " "      |                         | Counsel given until September 27th to file any pre-<br>trial motions.                                                                                                           |          |                             |                          |               |              |
| " "      |                         | Case continued to Oct. 4, 1976, for hearing on any<br>pretrial motions, at which time trial date<br>is to be scheduled.                                                         |          |                             |                          |               |              |
| " 24     |                         | Filed Deft's Motion for Statements (Permission to<br>inspect & copy statements made by deft.)                                                                                   |          |                             |                          |               |              |
| 7        |                         | " Deft's Motion for names and addresses of<br>witnesses.                                                                                                                        |          |                             |                          |               |              |
| 8        |                         | " Deft's Motion for Deposition.                                                                                                                                                 |          |                             |                          |               |              |
| 9        |                         | " Deft's Motion for Order permitting inspection<br>& copying of scientific tests or experiments.                                                                                |          |                             |                          |               |              |
| 10       |                         | " Deft's Motion for Order providing list of<br>property seized.                                                                                                                 |          |                             |                          |               |              |
| 11       |                         | " Deft's Motion for Independent Analysis.                                                                                                                                       |          |                             |                          |               |              |
| 12       |                         | " Deft's Motion for production of Deft's prior<br>criminal records.                                                                                                             |          |                             |                          |               |              |
| 13       |                         | " Deft's Motion for Order providing Grand Jury<br>Transcript & Information.                                                                                                     |          |                             |                          |               |              |
| 14       |                         | " Deft's Motion for disclosure of Rule 404<br>Evidence.                                                                                                                         |          |                             |                          |               |              |
| 15       |                         | " Deft's Motion for Bill of Particulars.                                                                                                                                        |          |                             |                          |               |              |
| 16       |                         | " Deft's Motion for Exculpatory Evidence.                                                                                                                                       |          |                             |                          |               |              |
| 17       |                         | " Deft's Claim & Motion for Discovery & Inspec-<br>tion Relating to Electronic Surveillance of<br>Deft.                                                                         |          |                             |                          |               |              |
| 18       |                         | " Deft's Motion for Means of Identification.                                                                                                                                    |          |                             |                          |               |              |
| 9        |                         | " Deft's Motion to Interview Witnesses or Alter-<br>natively for Information Regarding the Where-<br>about of Witnesses.                                                        |          |                             |                          |               |              |
| 10       |                         | " Deft's Motion for Statements of Co-conspira-<br>tors or Joint Venturers                                                                                                       |          |                             |                          |               |              |

(See next pg.)



| DATE    | PROCEEDINGS (continued)                                                                                                                                                                        | V. EXCLUDABLE DELAY |     |     |     |
|---------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|-----|-----|-----|
|         |                                                                                                                                                                                                | (a)                 | (b) | (c) | (d) |
| 1976    | (Document No.)                                                                                                                                                                                 |                     |     |     |     |
| Sep. 24 | Filed Deft's Motion for Rule 16 (a) (1) (C) Discover:                                                                                                                                          |                     |     |     |     |
| " "     | " Deft's Motion to Suppress.                                                                                                                                                                   |                     |     |     |     |
| " "     | " Deft's Motion to Dismiss.                                                                                                                                                                    |                     |     |     |     |
| " "     | " Deft's Motion for Hearing.                                                                                                                                                                   |                     |     |     |     |
| " 27    | " Deft's Motion for Preservation of Tapes.                                                                                                                                                     |                     |     |     |     |
| " 29    | Filed Memorandum in support Pre-trial Motions.                                                                                                                                                 |                     |     |     |     |
| Oct. 1. | Filed Government's memorar response to motions by defendant.                                                                                                                                   |                     |     |     |     |
| " "     | " Defendant's Supplemental Motion to Inspect.                                                                                                                                                  |                     |     |     |     |
| " 5     | Filed Government's Supplemental Responses to Motions by Defendant.                                                                                                                             |                     |     |     |     |
| " "     | Filed Defendant's Motion to File, Motion to Dismiss II, and Motion to Suppress Identification Late.                                                                                            |                     |     |     |     |
| " "     | " Defendant's Motion for Leave to File Memoranda After Hearing.                                                                                                                                |                     |     |     |     |
| " "     | " Defendant's Motion to Suppress Identification Testimony.                                                                                                                                     |                     |     |     |     |
| " "     | " Defendant's Motion to Dismiss II.                                                                                                                                                            |                     |     |     |     |
| " "     | " Defendant's Motion for Evidentiary Hearing.                                                                                                                                                  |                     |     |     |     |
| " "     | " Defendant's Certificate of Service.                                                                                                                                                          |                     |     |     |     |
| " "     | In open Court before Judge Holden. Jill Jacobson, Asst. U.S. Attorney; Martin Weinberg, Esq. and Robert Chimileski, Esq.                                                                       |                     |     |     |     |
| " "     | HEARING DEFT'S MOTIONS FOR STATEMENTS:                                                                                                                                                         |                     |     |     |     |
| " "     | Statements made to Court by Ms Jacobson re: Government has no such statements.                                                                                                                 |                     |     |     |     |
| " "     | Statements by Mr. Weinberg re: Government has informed defendant of no statements; followed by Ms Jacobson that this is 3500 material and that the Government has furnished police statements. |                     |     |     |     |
| " "     | ORDERED: Defendant's Motion granted.                                                                                                                                                           |                     |     |     |     |
| " "     | HEARING DEFT'S MOTION FOR NAMES AND ADDRESSES OF WITNESSES:                                                                                                                                    |                     |     |     |     |
| " "     | Statements by Ms Jacobson re: Government has complied with motion.                                                                                                                             |                     |     |     |     |
| " "     | Statements by Mr. Weinberg re: Defendant satisfied.                                                                                                                                            |                     |     |     |     |
| " "     | HEARING DEFT'S MOTION FOR DEPOSITION:                                                                                                                                                          |                     |     |     |     |
| " "     | Defendant waives motion.                                                                                                                                                                       |                     |     |     |     |
| " "     | HEARING DEFT'S MOTION FOR ORDER PERMITTING INSPECTION AND COPYING OF SCIENTIFIC TESTS OR EXPERIMENTS:                                                                                          |                     |     |     |     |
| " "     | Statements by Ms Jacobson re: Government willing to make available what material it has.                                                                                                       |                     |     |     |     |
| " "     | Statements by Mr. Weinberg re: Deft. accepts representation of Government.                                                                                                                     |                     |     |     |     |
| " "     | HEARING DEFT'S MOTION FOR ORDER PROVIDING LIST OF PROPERTY SEIZED:                                                                                                                             |                     |     |     |     |
| " "     | Statements by Ms. Jacobson re: Government has consented to furnish tests.                                                                                                                      |                     |     |     |     |
|         | over                                                                                                                                                                                           |                     |     |     |     |



UNITED STATES DISTRICT COURT  
CRIMINAL DOCKET

| DATE<br>1976 | 76-51-1 U.S.A. vs. Robert Marchand<br>(Document No.) | V. EXCLUDABLE DELA<br>(a) (b) (c) (d) |
|--------------|------------------------------------------------------|---------------------------------------|
| Oct. 5       | HEARING ON DEFT'S MOTION FOR INDEPENDENT ANALYSIS:   |                                       |
| " "          | Statements by Ms Jacobson re: Government has con-    |                                       |
| " "          | sented to defendant's requests, and defendant may    |                                       |
| " "          | be expected to review material almost immediately.   |                                       |
| " "          | Court states if defendant is not satisfied           |                                       |
| " "          | after Government has complied with said motion,      |                                       |
| " "          | defendant has 24 hours to file any motions.          |                                       |
| " "          | Court states Motion for Independent Analysis         |                                       |
| " "          | is denied Pro Forma after defendant has in-          |                                       |
| " "          | spected contents of defendant's motion for in-       |                                       |
| " "          | spection and copying of scientific tests or          |                                       |
| " "          | experiments. That said motions are renewable         |                                       |
| " "          | on October 8, 1976, after said inspection.           |                                       |
| " "          | HEARING ON DEFT'S MOTION FOR PRODUCTION OF DEFT'S    |                                       |
| " "          | PRIOR CRIMINAL RECORDS:                              |                                       |
| " "          | Statements by Ms Jacobson re: Government has         |                                       |
| " "          | no indication of any criminal record.                |                                       |
| " "          | Defendant satisfied.                                 |                                       |
| " "          | HEARING ON DEFT'S MOTION FOR DISCLOSURE OF RULE 404  |                                       |
| " "          | EVIDENCE:                                            |                                       |
| " "          | Statements made to Court that Government be-         |                                       |
| " "          | lieves this is 3500 material.                        |                                       |
| " "          | Statements by Mr. Weinberg re: Defendant accept      |                                       |
| " "          | Governments reply.                                   |                                       |
| " "          | ORDERED: Defendant's Motion denied if requests ex-   |                                       |
| " "          | ceeds that of Government. If Defendant re-           |                                       |
| " "          | quests further action, the Court will reconsider.    |                                       |
| " "          | HEARING ON DEFT'S MOTION FOR BILL OF PARTICULARS:    |                                       |
| " "          | Statements by Ms Jacobson re: Government has         |                                       |
| " "          | complied.                                            |                                       |
| " "          | Statements by Mr. Weinberg re: Government has        |                                       |
| " "          | complied with Numbers 1 - 5 but not 6 - 8.           |                                       |
| " "          | Number 7 waived by Defendant.                        |                                       |
| " "          | Statements by Ms Jacobson re: Government be-         |                                       |
| " "          | lieves it has complied.                              |                                       |
| " "          | HEARING ON MOTION FOR ORDER PROVIDING GRAND JURY     |                                       |
| " "          | TRANSCRIPT & INFORMATION:                            |                                       |
| " "          | Statements by Ms Jacobson re: there are no co-       |                                       |
| " "          | conspirators & witnesses.                            |                                       |
| " "          | Statements by Mr. Weinberg re: asks Court to         |                                       |
| " "          | reserve decision on this motion for later con-       |                                       |
| " "          | sideration in Motion to Dismiss II, specific         |                                       |
| " "          | claim doesn't appear in this particular motion,      |                                       |
| " "          | - - and asks for evidenciary hearing.                |                                       |
| " "          | ORDERED: Motion denied without prejudice to motions  |                                       |
| " "          | filed Oct. 5, 1976.                                  |                                       |
| " "          | Statements by Ms Jacobson re: that Grand Jury pro-   |                                       |
| " "          | ceedings were handled properly under the law.        |                                       |
| " "          | ORDERED: Government to comply with requests as to    |                                       |
| " "          | length of the Grand Jury proceedings, when G.J.      |                                       |
| " "          | was instructed and as to the time the G.J. re-       |                                       |
| " "          | turned an indictment.                                |                                       |
| " "          | HEARING ON DEFT'S MOTION FOR EXCULPATORY EVIDENCE:   |                                       |
| " "          | Statements by Ms Jacobson re: Government has         |                                       |
| " "          | complied; there is no exculpatory material at        |                                       |



| DATE<br>1976 | PROCEEDINGS (continued) |                                                                                                                                                                                  | V. EXCLUDABLE DELAY |     |     |     |
|--------------|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|-----|-----|-----|
|              | (Document No.)          |                                                                                                                                                                                  | (a)                 | (b) | (c) | (d) |
| Oct. 5       |                         | present - - further it complies with 3500 material.                                                                                                                              |                     |     |     |     |
| " "          |                         | ORDERED: Material to be provided sufficiently in advance of trial, at least 24 hours before trial.                                                                               |                     |     |     |     |
| " "          |                         | HEARING ON DEFT'S MOTION FOR DISCOVERY AND INSPECTION RELATING TO ELECTRONIC SURVEILLANCE OF DEFT.                                                                               |                     |     |     |     |
| " "          |                         | Statements by Ms Jacobson re: Government informed Deft. there was no electronic surveillance and denies so to Deft.                                                              |                     |     |     |     |
| " "          |                         | Statements by Mr. Weinberg in opposition.                                                                                                                                        |                     |     |     |     |
| " "          |                         | ORDERED: Government not required to make any further search of electronic surveillance.                                                                                          |                     |     |     |     |
| " "          |                         | HEARING ON DEFT'S MOTION FOR MEANS OF IDENTIFICATION                                                                                                                             |                     |     |     |     |
| " "          |                         | Statements by Ms. Jacobson re: Government willing to comply with Deft's requests.                                                                                                |                     |     |     |     |
| " "          |                         | HEARING ON DEFT'S MOTION TO INTERVIEW WITNESSES OR ALTERNATIVELY FOR INFORMATION REGARDING THE WHEREABOUTS OF WITNESSES:                                                         |                     |     |     |     |
| " "          |                         | Defendant waives motion.                                                                                                                                                         |                     |     |     |     |
| " "          |                         | HEARING ON DEFT'S MOTION FOR STATEMENTS OF CO-CONSPIRATORS OR JOINT VENTURES:                                                                                                    |                     |     |     |     |
| " "          |                         | Defendant waives motion.                                                                                                                                                         |                     |     |     |     |
| " "          |                         | HEARING DEFT'S MOTION FOR RULE 16(a)(1)(C) DISCOVERY                                                                                                                             |                     |     |     |     |
| " "          |                         | Defendant waives motion                                                                                                                                                          |                     |     |     |     |
| " "          |                         | HEARING DEFT's MOTION TO SUPPRESS:                                                                                                                                               |                     |     |     |     |
| " "          |                         | Statements by Mr. Weinberg re: request evidenciary hearing.                                                                                                                      |                     |     |     |     |
| " "          |                         | ORDERED: Hearing scheduled for Oct. 12, 1976, at 1:30 P.M. on Deft's Motion to Suppress.                                                                                         |                     |     |     |     |
| " "          |                         | Government to notify Court by Friday if unable to obtain Government's main witness.                                                                                              |                     |     |     |     |
| " "          |                         | HEARING ON DEFT'S MOTION TO DISMISS:                                                                                                                                             |                     |     |     |     |
| " "          |                         | Defendant relies on Memoranda.                                                                                                                                                   |                     |     |     |     |
| " "          |                         | HEARING ON DEFT'S MOTION FOR PRESERVATION OF TAPES                                                                                                                               |                     |     |     |     |
| " "          |                         | Statements by Ms Jacobson re: Government has no tape recordings of anyone.                                                                                                       |                     |     |     |     |
| " "          |                         | ORAL MOTION BY DEFT. FOR EVIDENCIARY HEARING:                                                                                                                                    |                     |     |     |     |
| " "          |                         | ORDERED: Motion granted.                                                                                                                                                         |                     |     |     |     |
| " "          |                         | Scheduled for Oct. 12, 1976, 1:30 P.M. at Montpelier. Evidenciary Hearing and Oral Argument on Deft's Motion to Dismiss # 1, filed 9-24-76. and Motion to dismiss filed 10-5-76; |                     |     |     |     |
| " "          |                         | Evidenciary Hearing and Oral Argument on Deft's Motion to Suppress filed 9-24-76.                                                                                                |                     |     |     |     |
| " "          |                         | Hearing on Deft's Motion to Produce Grand Jury Transcript, etc. filed 9-24-76.                                                                                                   |                     |     |     |     |
| over         |                         |                                                                                                                                                                                  |                     |     |     |     |



U.S.A. vs. ROBERT MARCHAND Cr. 76-51-1

See next page



| DATE<br>1976 | PROCEEDINGS (continued)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | V. EXCLUDABLE DELAY |          |     |     |
|--------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|----------|-----|-----|
|              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | (a)                 | (b)      | (c) | (d) |
| Nov. 30      | Filed Findings of Fact & Conclusions of Law -- that motion of deft. to dismiss indictment against him is denied; motion of deft. to suppress identification testimony of Victor Roy is granted; motion to suppress the identification testimony of Richard Perkins denied; motion of deft. to suppress evidence obtained at time of arrest is denied; renewed motion of deft. for inspection of minutes of grand jury proceedings denied and case will be set for trial to commence Mon., 12-20-76 at 9:30 a.m. Mailed copy to attys. | 3                   | 11-30-76 | E   | 49  |
| Dec. 8       | Filed Order amending Order entered 11-20-76--that motion of deft. to suppress identification testimony of Victor Roy is granted without prejudice to a further offer by Govt. to establish at trial, out of the presence of the jury, that an adequate independent basis exists to support in-court identification of the deft. by witness Roy; the motion to suppress the identification testimony of Richard Perkins is denied. Mailed copy to attorneys.                                                                           |                     |          |     |     |
| Dec. 13      | Filed Subpoena to testify returned served.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                     |          |     |     |
| " 17         | Filed Subpoena to Produce Document or Object, returned served.                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                     |          |     |     |
| " 20         | Filed Government's notice of readiness.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                     |          |     |     |
| " 21         | Filed Government's Motion to Re-open suppression hearing on identification of defendant.                                                                                                                                                                                                                                                                                                                                                                                                                                              |                     |          |     |     |
| " 29         | Filed Government's Subpoena to Testify, returned served.                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                     |          |     |     |
| 1977         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                     |          |     |     |
| Jan. 3       | Filed Defendant's Motion to file Motion to Dismiss III Late.                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                     |          |     |     |
| " "          | Filed Defendant's Motion to Dismiss III.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                     |          |     |     |
| " "          | Filed Defendant's Memorandum in Support of Motion to Dismiss III.                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                     |          |     |     |
| " 4          | Filed Government's Subpoena to produce. Returned Served.                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                     |          |     |     |
| " 5          | A trial by jury was begun before Judge Holden. Jill Jacobson, and John Hughes, Jr., Asst. U. S. Attorneys; Richard White, Esq., Martin Weinberg, Esq. and Joseph S. Oteri, Esq., Attorneys for Defendant.                                                                                                                                                                                                                                                                                                                             |                     |          |     |     |
| " "          | Defendant present in Court with his attorneys for trial.                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                     |          |     |     |
| " "          | Filed Defendant's Motion to Sequester Witnesses.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                     |          |     |     |
| " "          | Filed Defendant's Opposition to Government's Motion to Re-Open Suppression Hearing on Identification of Defendant.                                                                                                                                                                                                                                                                                                                                                                                                                    |                     |          |     |     |
| " "          | In Chambers. Counsel present. A discussion was held between the Court and Counsel.                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                     |          |     |     |
| " "          | ORDERED: Motion to Sequest witnesses, granted.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                     |          |     |     |



| DATE<br>1977 | PROCEEDINGS (continued) |                                                                                                                                                            | V. EXCLUDABLE DEL |     |     |
|--------------|-------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|-----|-----|
|              | (Document No.)          |                                                                                                                                                            | (a)               | (b) | (c) |
| Jan. 5       |                         | A jury was impaneled by the Clerk.                                                                                                                         |                   |     |     |
| " "          |                         | The oath to Petit Jurors in Criminal cases was administered to the Jury by the Clerk.                                                                      |                   |     |     |
| " "          |                         | Jury excused from the courtroom and advised to return at 3:00 P.M.                                                                                         |                   |     |     |
| " "          |                         | In Court. Counsel present. Jury not present.                                                                                                               |                   |     |     |
| " "          |                         | Hearing on Defendant's Motion to Dismiss.                                                                                                                  |                   |     |     |
| " "          |                         | Statements made to Court by Mr. Weinberg, followed by Ms Jacobson in opposition; further followed by Mr. Weinberg.                                         |                   |     |     |
| " "          |                         | Decision reserved.                                                                                                                                         |                   |     |     |
| " "          |                         | Oral motion made by Ms Jacobson to quash the subpoena of Donald Allard, followed by Mr. Weinberg in opposition.                                            |                   |     |     |
| " "          |                         | ORDERED: Defendant's opposition to Government's Motion to reopen Suppression hearing on identification of defendant, denied..                              |                   |     |     |
| " "          |                         | Statements made to Court by Ms Jacobson re: identification by witness Victor Roy. Suppression hearing.                                                     |                   |     |     |
| " "          |                         | The following witnesses, sworn by Clerk, were examined on behalf of the Government: Theodore Handoga, Victor L. Roy, Jr.                                   |                   |     |     |
| " "          |                         | Mr. Catanzaro, Esq., attorney for Mr. Roy, permitted to step forward before the Court.                                                                     |                   |     |     |
| " "          |                         | Statements made to Court by Mr. Catanzaro re: preservation of Mr. Roy's rights.                                                                            |                   |     |     |
| " "          |                         | Government allowed to proceed with examination of Mr. Roy. Mr. Catanzaro allowed to object regarding defendant's rights.                                   |                   |     |     |
| " "          |                         | Mr. Catanzaro request Court for in camera hearing with the Court regarding defendant's address, etc.                                                       |                   |     |     |
| " "          |                         | Defense counsel have no objection to in camera hearing if the Government does not attend said hearing. Objection by Government.                            |                   |     |     |
| " "          |                         | Filed Government's Memorandum of Law.                                                                                                                      |                   |     |     |
| " "          |                         | ORDERED: Motion of defendant to dismiss, denied.                                                                                                           |                   |     |     |
| " "          |                         | ORDERED: Government has not shown valid grant of immunity by State of Vermont.                                                                             |                   |     |     |
| " "          |                         | ORDERED: Government's Motion to Quash the subpoena of Donald Allard, granted.                                                                              |                   |     |     |
| " "          |                         | ORDERED: That at request of defendant, the presentence report of Victor L. Roy, Jr. be sealed. That there is no reason to pass on the immunity of Mr. Roy. |                   |     |     |
| " "          |                         | At 3:35 P.M. the jury was excused until 9:30 A.M. tomorrow morning.                                                                                        |                   |     |     |
| " "          |                         | Richard Perkins, Sworn by Clerk, was examined on behalf of the Government.                                                                                 |                   |     |     |
| " 6          |                         | Trial resumed.                                                                                                                                             |                   |     |     |
| " "          |                         | Filed Government's Motion for Grant of Immunity.                                                                                                           |                   |     |     |
| " "          |                         | In Court. Counsel present. Jury not present.                                                                                                               |                   |     |     |
| " "          |                         | Hearing on Government's Motion for Grant of Immunity.                                                                                                      |                   |     |     |
| " "          |                         | Statements made to Court by Mr. Hughes, followed by Mr. Catanzaro, Esq., Attorney for Mr. Roy.                                                             |                   |     |     |



| DATE<br>1977 | PROCEEDINGS (continued)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | V. EXCLUDABLE DELAY |     |     |     |
|--------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|-----|-----|-----|
|              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | (a)                 | (b) | (c) | (d) |
| Jan. 6       | ORDERED: Motion granted.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                     |     |     |     |
| " "          | Filed Order - - Pursuant to 18 U.S.C. §6002 that the said Victor Roy give testimony or provide other information which he refuses to give or to provide on the basis of his privilege against self incrimination as to all matters about which he may be interrogated at said trial. This order shall become effective only if after the date of this order the said Victor Roy refuses to testify or provide other information on the basis of his privilege against self incrimination. Copy provided counsel. |                     |     |     |     |
| " "          | Court explained rights of immunity to Mr. Roy, in the presence of his attorney.                                                                                                                                                                                                                                                                                                                                                                                                                                  |                     |     |     |     |
| " "          | Victor L. Roy, Jr., resumed the stand and was further examined on behalf of the Government.                                                                                                                                                                                                                                                                                                                                                                                                                      |                     |     |     |     |
| " "          | ORDERED: Testimony of Mr. Roy to be presented to the jury.                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                     |     |     |     |
| " "          | In Court. Jury present. Counsel present.                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                     |     |     |     |
| " "          | Opening statements made to the jury by Ms Jacobson.                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                     |     |     |     |
| " "          | Counsel for defendant reserve right to opening statement until after the close of Government's case.                                                                                                                                                                                                                                                                                                                                                                                                             |                     |     |     |     |
| " "          | Richard Perkins, recalled by the Government, was further examined on behalf of the Government.                                                                                                                                                                                                                                                                                                                                                                                                                   |                     |     |     |     |
| " "          | Exhibit 20, Stipulation, read into the record by Ms Jacobson.                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                     |     |     |     |
| " "          | Victor L. Roy, Jr., recalled by the Government, was further examined on behalf of the Government.                                                                                                                                                                                                                                                                                                                                                                                                                |                     |     |     |     |
| " "          | At Bench. Counsel present. Motion by Mr. Oteri for a mistrial.                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                     |     |     |     |
| " "          | ORDERED: Motion denied.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                     |     |     |     |
| " "          | Court instructs jury regarding Mr. Roy's understanding of immunity.                                                                                                                                                                                                                                                                                                                                                                                                                                              |                     |     |     |     |
| " 7          | Trial resumed.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                     |     |     |     |
| " "          | The following witnesses, Sworn by Clerk, were examined for the Government: James H. Harris, Theodore S. Handoga.                                                                                                                                                                                                                                                                                                                                                                                                 |                     |     |     |     |
| " "          | Government rests.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                     |     |     |     |
| " "          | Filed Defendant's Motion for Judgment of Acquittal.                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                     |     |     |     |
| " "          | In Court. Jury excused from Courtroom. Counsel present.                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                     |     |     |     |
| " "          | Hearing on Defendant's Motion for directed verdict of acquittal.                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                     |     |     |     |
| " "          | Statements made to Court by Mr. Weinberg, followed by Ms Jacobson, further followed by Mr. Weinberg, Ms Jacobson.                                                                                                                                                                                                                                                                                                                                                                                                |                     |     |     |     |
| " "          | ORDERED: Defendant's Motion for Directed Verdict of Acquittal, denied.                                                                                                                                                                                                                                                                                                                                                                                                                                           |                     |     |     |     |
| " "          | Opening statements waived by Counsel for Defendant.                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                     |     |     |     |
| " "          | Timothy S. Hillman, Sworn by Clerk, was examined on behalf of the Defendant.                                                                                                                                                                                                                                                                                                                                                                                                                                     |                     |     |     |     |
| " "          | Defendant rests. Government rests.                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                     |     |     |     |
| " "          | At Bench. Counsel present. Defendant renews his motion for directed verdict of acquittal.                                                                                                                                                                                                                                                                                                                                                                                                                        |                     |     |     |     |
| " "          | ORDERED: Motion denied.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                     |     |     |     |



| DATE<br>1977 | PROCEEDINGS (continued) |                                                                                                                                                                          | V. EXCLUDABLE DEL. |     |     |
|--------------|-------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|-----|-----|
|              | (Document No.)          |                                                                                                                                                                          | (a)                | (b) | (c) |
| Jan. 7       |                         | Jury excused until 9:30 A.M., Monday, Jan. 10, 1977.                                                                                                                     |                    |     |     |
| " "          |                         | Filed Government's Request to Charge and Trial Memorandum.                                                                                                               |                    |     |     |
| " "          |                         | Filed Requests by Robert P. Marchand, Jr., for Instructions to the Jury.                                                                                                 |                    |     |     |
| " "          |                         | Filed Defendant's Supplemental Request for Instructions.                                                                                                                 |                    |     |     |
| " "          |                         | In Chambers. Counsel present.                                                                                                                                            |                    |     |     |
| " "          |                         | A request to charge conference was held between the Court and Counsel.                                                                                                   |                    |     |     |
| " 12         |                         | Trial resumed.                                                                                                                                                           |                    |     |     |
| " "          |                         | Closing arguments made to jury by Ms Jacobson.                                                                                                                           |                    |     |     |
| " "          |                         | At Bench. Counsel present. Motion made by Mr. Weinberg for a mistrial.                                                                                                   |                    |     |     |
| " "          |                         | ORDERED: Motion denied.                                                                                                                                                  |                    |     |     |
| " "          |                         | Closing arguments made to jury by Mr. Oteri, further followed by Ms Jacobson, Mr. Oteri.                                                                                 |                    |     |     |
| " "          |                         | ORDERED: That Mr. Lane Vargas be appointed Foreman of the Jury.                                                                                                          |                    |     |     |
| " "          |                         | At 11:08 A.M. the Court commenced its charge to the jury, concluding at 11:50 A.M.                                                                                       |                    |     |     |
| " "          |                         | ORDERED: That alternate juror, Mrs. Judith Richards, be excused from further consideration of the case.                                                                  |                    |     |     |
| " "          |                         | Paul G. Dingler, was sworn by Clerk, as officer in charge of the jury.                                                                                                   |                    |     |     |
| " "          |                         | At 2:55 P.M. the jury came into Court and asked that the testimony of Victor Roy be read back, at which time it was and the jury retired to further deliberate the case. |                    |     |     |
| " "          |                         | Filed sealed presentence reports of Victor L. Roy and Richard Wayne Perkins.                                                                                             |                    |     |     |
| " "          |                         | At 4:55 P.M. the jury came into Court and reported a guilty verdict.                                                                                                     |                    |     |     |
| " "          |                         | Motion made by Defendant to poll the jury.                                                                                                                               |                    |     |     |
| " "          |                         | ORDERED: That the Jury be polled.                                                                                                                                        |                    |     |     |
| " "          |                         | Jury excused. Counsel and defendant present.                                                                                                                             |                    |     |     |
| " "          |                         | Ms Jacobson, for Government, request that bail be continued as previously set.                                                                                           |                    |     |     |
| " "          |                         | ORDERED: Bail continued as previous set; that a presentence investigation and report be made by the probation officer.                                                   |                    |     |     |
| " 13         |                         | Filed Subpoena to Produce Document returned served.                                                                                                                      |                    |     |     |
| Jan 17       |                         | Filed Defendant's motion to set aside the verdict and enter judgment of acquittal.                                                                                       |                    |     |     |
| " 21         |                         | Filed Government's opposition to motion to set aside verdict and enter judgment of acquittal.                                                                            |                    |     |     |
| Feb. 10      |                         | Filed Transcript of proceedings.                                                                                                                                         |                    |     |     |
| Feb. 14      |                         | Filed Memorandum in support of Defendant's Motion to Set Aside the Verdict and Enter Judgment of Acquittal.                                                              |                    |     |     |
| Feb. 17      |                         | Filed Memorandum in Support of Defendant's Sentencing recommendation.                                                                                                    |                    |     |     |

(see next pg.)



| DATE<br>1977 |        | PROCEEDINGS (continued)                                                                                                                                                                                                                                                                                                                                                                      | V. EXCLUDABLE DEL. |     |     |
|--------------|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|-----|-----|
|              |        | (Document No.)                                                                                                                                                                                                                                                                                                                                                                               | (a)                | (b) | (c) |
| Feb. 18      | ✓      | In open Court before Judge Holden, defendant present with his attorneys, Joseph Oteri, Esq. and Martin Weinberg, Esq.; Jill Jacobson, Esq. for Government. Hearing on defendant's motion to set aside the verdict and enter judgment of acquittal.                                                                                                                                           |                    |     |     |
| "            | "      | Statements made to Court by Mr. Weinberg and by Ms Jacobson.                                                                                                                                                                                                                                                                                                                                 |                    |     |     |
| 78           | " 18   | Filed Government's reply to defendant's memorandum in support of his motion to set aside the verdict and enter judgment of acquittal.                                                                                                                                                                                                                                                        |                    |     |     |
| "            | "      | Ordered: Motion denied.                                                                                                                                                                                                                                                                                                                                                                      |                    |     |     |
| "            | "      | Statements made to Court by Mr. Oteri and by Ms. Jacobson re sentencing.                                                                                                                                                                                                                                                                                                                     |                    |     |     |
| 79           | " 18   | Filed Judgment and Probation/Commitment Order -- defendant is committed to the custody of Attorney General for imprisonment for a period of one year with a special parole term of two years; defendant fined in the sum of \$ 2,000.00 and to stand committed until fine is paid, or otherwise disposed of in due course of law. Execution of sentence is stayed pending outcome of appeal. |                    |     |     |
| 80           | " 18   | Filed defendant's Notice of Appeal. Mailed copy to Oteri & Weinberg, Esqs., Rexford, Kilmartin & Chimileski, Esqs.(Richard White), U. S. Attorney, Judge Holden, Court Reporter and Clerk, U. S. Court of Appeals for the Second Circuit.                                                                                                                                                    |                    |     |     |
| 81           | " 18   | Filed defendant's motion for stay of execution of sentence.                                                                                                                                                                                                                                                                                                                                  |                    |     |     |
| 82           | " 18   | " defendant's motion to admit to bail.                                                                                                                                                                                                                                                                                                                                                       |                    |     |     |
| "            | 18     | In Court -- Hearing on defendant's motion for stay of execution of sentence and motion to admit bail.                                                                                                                                                                                                                                                                                        |                    |     |     |
| "            | "      | Ordered: Motions granted. Bail is continued as previously fixed.                                                                                                                                                                                                                                                                                                                             |                    |     |     |
| 83           | Mar. 2 | Filed Deft's Motion to Set Aside Verdict & Enter Judgment of Acquittal.                                                                                                                                                                                                                                                                                                                      |                    |     |     |
| 84           | " 3    | " Deft's Notice of Appeal. Mailed copy to Court Reporter and Clerk, U. S. Court of Appeals for the Second Circuit.                                                                                                                                                                                                                                                                           |                    |     |     |
| "            | 4      | Mailed record on appeal to Clerk, U. S. Court of Appeals for the Second Circuit., N.Y., N.Y. Attys. notified.                                                                                                                                                                                                                                                                                |                    |     |     |



COPY

UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

CLERK: *Ames*  
JUL 22 2 03 PM '76  
U.S. DISTRICT COURT  
DISTRICT OF VERMONT

UNITED STATES OF AMERICA

v.

ROBERT MARCHAND

CRIMINAL NO. 76-51  
21 U.S.C. Sections 841,  
846  
18 U.S.C. Section 2

COUNT 1

The Grand Jury charges:

From on or about May 1, 1975, up to and including July 18, 1975, in the District of Vermont, ROBERT MARCHAND, the defendant, unlawfully, willfully and knowingly did combine, conspire, confederate and agree together with Richard W. Perkins and Victor L. Roy, Jr. and with other persons to the Grand Jury known and unknown to commit offenses against the United States, to wit, to violate Title 21, United States Code, Section 841.

It was part of the conspiracy that the conspirators would distribute and possess with intent to distribute a quantity of marihuana, a Schedule 1 controlled substance; in violation of Title 21, United States Code, Section 841.

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts were committed in the District of Vermont:

OVERT ACTS

1. On or about July 15, 1975, ROBERT MARCHAND had a telephone conversation with Victor L. Roy, Jr.

2. On July 18, 1975, ROBERT MARCHAND traveled to the parking lot of the Howard Johnson's Motor Lodge, Brattleboro, Vermont.

(Title 21, United States Code, Section 846)



COUNT 11

The Grand Jury further charges:

On or about July 18, 1975, in the District of Vermont, ROBERT MARCHAND, the defendant, unlawfully, willfully and knowingly did distribute and possess with the intent to distribute 180 pounds of marihuana, a Schedule 1 controlled substance; in violation of Title 21, United States Code, Section 841 and Title 18, United States Code, Section 2.

A TRUE BILL

Harold E. S. S.  
Foreman

GEORGE W. F. COOK  
United States Attorney

By Jill A. Jacobson  
JILL A. JACOBSON  
Assistant U.S. Attorney

Date: July 22, 1976

*a true copy,*

*Attest:*

Edward J. Tull  
Clerk

UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

UNITED STATES OF AMERICA )

V. )

ROBERT P. MARCHAND, JR. )

CRIM. No. 76-51

CLAIM AND MOTION FOR DISCOVERY AND  
INSPECTION RELATING TO ELECTRONIC  
SURVEILLANCE OF DEFENDANT

Now comes the defendant, Robert P. Marchand, Jr., who moves, pursuant to Rules 12, 16(a)(1)(A), 16(a)(1)(D), and 41 of the Federal Rules of Criminal Procedure, 18 U.S.C. 2510 et. seq., and 18 U.S.C. 3504 that this Honorable Court order the Government to affirm or deny the following electronic surveillance:

1. Wire interceptions of telephonic communications over 802-622-8206, the residence and 802-622-8285 the former number listed to Ann Curtis and the latter number listed to Robert P. Marchand, d/b/a Robert P. Marchand Real Estate located at a residence frequented by the defendant at Guilford, New Hampshire from on or about May 30, 1974 to September 15, 1975 at Guilford, New Hampshire;

2. Wire interceptions of telephonic communications over 413-624-5579 listed to Tim Hillman at a residence frequented by the defendant from October 1, 1975 to the present at Colrain, Massachusetts;



3. Any other wire interception of conversations of defendant;

4. Any other wire interception aimed at gathering evidence against the defendants.

Specifically, the defendant moves that the Government be ordered to make an appropriate and thorough inquiry of the following agencies:

1. Drug Enforcement Administration of Massachusetts or Vermont;

2. Guilford Police Department, Guilford, New Hampshire;

3. Colrain Police Department, Colrain, Massachusetts;

4. Massachusetts State Police;

5. United States Attorney's Office of Vermont;

6. United States Attorney's Office of the Southern District of Florida;

7. Any state or federal Strike Force investigating the defendant in the State of Florida; for interceptions between the dates of June 1, 1975 and the present regarding interceptions delineated in paragraphs 1, 2, 3, and 4, supra, which the defendant claims did occur, see Claim appended hereto; incorporated herein and marked "A".

If the Government affirms any electronic surveillance to produce for inspection and copying the following:

1. The original of all tapes, voice records, mechanical or electronic recordings, logs, records of any surveillance;

2. The logs, letters, memoranda, affidavits, applications, papers submitted in support of application for executive, administrative, or judicial approval of the surveillance;

3. All executive, administrative, or judicial orders for the surveillance.

If the Government denies any electronic surveillance to state, by affidavits, the extent of its inquiries regarding the surveillance and the specific nature of the information disclosed by said inquiries.

By his attorneys,

Joseph S. Oteri

Martin G. Weinberg

Duncan Kilmartin



AFFIDAVIT

Now comes Martin G. Weinberg who hereby deposes and swears to the following:

1. that he is an attorney-at-law and counsel for the defendant;

2. that at both phone numbers listed in Guilford, New Hampshire the defendant frequently had phone trouble, that he was unable to direct dial long distance calls despite the technological ability in the area to do so and that he occasionally heard noises on the phone some sounding like the clicking of a receiver being pushed in and out and others like buttons being pressed in the background;

3. that other individuals visiting him at his residence in Guilford, New Hampshire heard noises and had trouble dialing as he did;

4. that the noises increased in the opinion of both the defendant and his visitors between August and October of 1975;

5. that affiant has had conversations with a resident of Colrain, Massachusetts who was a neighbor of the defendant when he lived in Colrain, Massachusetts;

6. that this individual fears retribution from the local police chief in Colrain, Massachusetts, and has requested that affiant not disclose his name in public, however, this individual will voluntarily testify to the court incamera regarding the substance of the following paragraphs;

7. that this individual knows the police chief of Colrain, Massachusetts, Russell Dennison; that in the early summer of 1976 he observed Chief Dennison in a green Chrysler or Plymouth or a green vehicle which appeared as a Chrysler or Plymouth to the witness on a dirt road directly across the street from the Colrain residence of the defendant; that the Police Chief's car was pulled to the opposite side of the dirt road and that he was directly next to the telephone poll closest to the defendant's driveway; that the Police Chief was scrutinizing the telephone poll;

8. that this witness also was informed by individuals in the town that the Police Chief had requested that various individuals compile information regarding telephone lines running to and from the residence of the defendant and that he informed individuals that if they did not perform these functions for him that he would do it on his own.

Sworn to under the pains and penalties of perjury this 22 day of September, 1976.

  
Martin G. Weinberg

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

, 1976

Then personally appeared Martin G. Weinberg and made oath that he had read the contents of an Affidavit which he had previously signed and that the statements therein are true to the best of his knowledge and belief.

Notary Public  
My commission expires:  
September 3, 1982



UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

UNITED STATES )

V. )

ROBERT P. MARCHAND, JR. )

Crim. No. 76-51

MOTION TO SUPPRESS IDENTIFICATION TESTIMONY

Now comes the defendant, Robert P. Marchand, Jr., in the above-captioned matter and moves that this Honorable Court, pursuant to Rule 12 and Rule 41 of the Federal Rules of Criminal Procedure, and pursuant to the Due Process Clause of the Fifth Amendment of the United States Constitution, order suppressed the following evidence:

1. any and all pretrial photographic identification of any picture of the defendant Robert P. Marchand, Jr., by Victor Roy;
2. any and all pretrial photographic identification of any picture of the defendant Robert P. Marchand, Jr., by Richard Perkins;
3. any potential in-court identification of the defendant Robert P. Marchand, Jr., by Victor Roy;
4. any potential in-court identification of the defendant Robert P. Marchand, Jr., by Richard Perkins.

In support of this motion, the defendant assigns the following grounds:

1. that the photographic identification procedures employed by agents of the Drug Enforcement Administration, which generated any and all pretrial identifications of the

defendant's photograph by either Richard Perkins or by Victor Roy, were impermissibly suggestive and in violation of the Due Process Clause of the Fifth Amendment of the United States Constitution;

2. that any potential in-court identification of the defendant by either Roy or Perkins is fatally tainted by the impermissible and unnecessarily suggestive photographic procedures used prior to trial.

#### MEMORANDUM OF LAW

The United States Court of Appeals for the Second Circuit in Brathwaite vs. Manson, 527 F.2d 363 applied the United States Supreme Court decision in Neil vs. Biggers, 409 U.S. 188, 93 Supreme Court 375 to a photographic identification procedure that was admittedly "impermissibly suggestive". The defendants will demonstrate at an evidentiary hearing that the photographic display in the case at bar was impermissibly suggestive. Photographs of the defendant Robert P. Marchand, Jr. were singled and selected out vitiating any opportunity for an impartial and reliable pretrial identification. The Court in Brathwaite determined that any identification resulting from an "unnecessarily" suggestive confrontation must be excluded. Brathwaite vs. Manson, 527 F.2d 368. The Court held that the Neil vs. Biggers standard only qualified the unnecessarily suggestive confrontations. standard for cases where photographic identification procedures occurred prior to the United States Supreme Court decision in Stovall vs. Denno ( a case which preceded any and all identifications relevant to the above-captioned matter).

The defendants will also demonstrate that any potential in-court identification is tainted by the pretrial



identification, in that because of the impermissibly suggestive pertrial procedures, "a very substantial likelihood of irreparable mis-identification" exists. Simmons vs. United States 390 U.S. at 382.

By his attorneys,

\_\_\_\_\_  
Joseph S. Oteri

\_\_\_\_\_  
Martin G. Weinberg

\_\_\_\_\_  
Duncan Kilmartin

UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

UNITED STATES OF AMERICA )

VS. )

ROBERT P. MARCHAND, JR. )

CRIM. No. 76-51

MOTION TO SUPPRESS

Now comes the defendant, Robert P. Marchand, Jr. and pursuant to Rule 41 of the Federal Rules of Criminal Procedure and the Fourth, Fifth and Sixth Amendments to the United States Constitution moves that the following evidence be suppressed:

1. any and all documents, papers, address books, and other evidence seized from his person or from the residence where he was located, shortly before, during or shortly after the time of his arrest in the Southern District of Florida on or about August 24, 1976;

2. any and all statements elicited from him at the location and at the time mentioned in paragraph 1.

In support of this motion the defendant assigns the following grounds:

1. that on or about August 24, 1976 he was detained without probable cause and without his consent;

2. that prior to his arrest on or about August 24, 1976, a search was conducted of the premises and seizures were made;

3. that alternatively seizures of property and documents were made at or about the time of his arrest on August 24, 1976 but that these searches were not properly within the search incident to arrest scope as defined by Chimel v. California, 395 U.S. 752;



4. that any statements elicited from him was pursuant to an illegal arrest and in violation of his rights to counsel and to silence as protected by the Fifth and Sixth Amendments to the United States Constitution.

Inasmuch as the defendant has not yet received pre-trial discovery, the defendant is unable to further particularize this motion or to expand the subjects of his Motion to Suppress. In particular, pre-trial discovery may generate information warranting a motion to suppress the testimony of Victor Roy or Richard Perkins. The defendant requests leave to amend and supplement his motion when he is acquainted with the facts which properly form the basis of a new and enlarged motion..

The defendant further moves under Rule 41(e) of the Federal Rules of Criminal Procedure for the return of any and all property seized from him upon his detention and arrest in the Southern District of Florida on August 24, 1976.

Respectfully submitted,  
By his attorneys,  
OTERI & WEINBERG

\_\_\_\_\_  
Joseph S. Oteri

\_\_\_\_\_  
Martin G. Weinberg

\_\_\_\_\_  
Duncan Kilmartin

UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

UNITED STATES )

V. )

ROBERT P. MARCHAND, JR. )

Crim. No. 76-51

MOTION TO DISMISS II

Now comes the defendant, Robert P. Marchand, Jr., and pursuant to Rules 6 and 12 of the Federal Rules of Criminal Procedure, moves that this Honorable Court dismiss Count II of the above-entitled indictment.

In support of this motion, the defendant assigns the following grounds:

1. that the Government abused the Grand Jury's subpoena power by employing it for purposes of conducting a private interrogation of Victor Roy;

2. that the Government has failed to preserve evidence of the initial interviews of Victor Roy by the Drug Enforcement Administration, and thus has deprived the defendant of his right to evidence which is guaranteed him by the Due Process Clause of the Fifth Amendment and the Confrontation Clause of the Sixth Amendment to the United States Constitution;

3. that any and all identifications of the defendant, Robert P. Marchand, Jr., were fatally tainted by impermissibly suggestive photographic identification procedures employed by the Drug Enforcement Administration with prospective witnesses Victor Roy and Richard Perkins, and that but for these tainted identifications there would be no evidence linking the



defendant, Robert P. Marchand, Jr., with the crime of the distribution of marihuana;

4. that exculpatory evidence of the suggestive nature of the pretrial identification procedures and of the ambivalence and lack of certainty of the pretrial identifications by Victor Roy and Richard Perkins was not introduced to the Grand Jury with evidence which inculpated Mr. Marchand, and that the defendant was therefore deprived of a fair and impartial Grand Jury proceeding.

#### MEMORANDUM OF LAW

In support of the first basis of the motion, the defendant relies on Durbin vs. United States, 221 F.2d 520 (D.C. Cir. 1954). In Durbin, a witness was subpoenaed for the purpose of the conducting of a private interrogation by the United States Attorney. The Court held that it was illegal for a prosecutor to use a Grand Jury subpoena to restrain or compel a witness's travel, unless the Grand Jury subpoena was issued for the purpose of having the witness testify before the Grand Jury and not for the purpose of the prosecutor conducting a private interrogation pursuant to the subpoena with a witness. C.F. United States vs. Gurney 393 F.Supp. 683 (Midd. Dist. of Florida, 1974), United States vs. Keen, 509 F.2d 1273 (6th Cir., 1975). In the case at bar, the evidence will demonstrate that a Grand Jury subpoena was served on Victor Roy for his appearance in Burlington at 9:00 a.m. and that the Government had no intention of having Mr. Roy appear before the Grand Jury at 9:00 a.m.; rather the purpose of having the subpoena served on Mr. Roy for that time was to compel him to come to Burlington for the purpose of a private interrogation by the United States Attorney, at which time impermissible



suggestive photographic identification procedures were used to link the defendant, Robert P. Marchand, Jr., with the crime of the distribution of 180 pounds of marihuana.

In support of the second basis for the motion, the defendant relies on United States vs. Lonardo, 350 F.2d 523 (6th Cir., 1965), and United States vs. Carrasco, 537 F.2d 372 (9th Cir., 1976). The reasons in support of this motion are more fully set forth in the memorandum in support of the pretrial motion for preservation of tapes. The evidence will demonstrate that tape recordings were made of pretrial interviews between the Government and Victor Roy and that the Government has now represented that no tapes are in existence.

In support of the third basis for this motion, the defendant relies on the cases cited in the memorandum in the Motion to Suppress Identification II and the principle that some competent evidence of identification must be introduced to support a Grand Jury indictment.

In support of the fourth basis for this motion, the defendant relies on United States vs. DeMarco, 401 F.Supp. 505 (C.D. Cal., 1975), and Johnson vs. The Superior Court of California, 539 P.2d 792, 1975. Both of these cases require the Government to disclose to the Grand Jury exculpatory as well as inculpatory evidence. The Grand Jury was entitled to know the details of the pretrial identification process and the ambivalence and incompleteness of the identifications of the defendant. The failure of the Government to so introduce this evidence violates the defendant's rights to a fair Grand Jury hearing. Moreover, ABA standard, to prosecute and function, 3.6b, requires that the prosecutor should disclose to the Grand Jury any evidence "which he knows will tend to negate guilt". This standard was also violated by the failure of the Government to inform the Grand Jury of the nature of the



Jury of the nature of the process which culminated in the uncertain  
identification of Robert P. Marchand, Jr.

By his attorneys,

\_\_\_\_\_  
Joseph S. Oteri

\_\_\_\_\_  
Martin G. Weinberg

\_\_\_\_\_  
Duncan Kilmartin

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF VERMONT

-----)  
United States of America )

vs )

Robert MARCHAND )  
-----)

Criminal Action #76-51-1

Hearing before The Honorable JAMES S. HOLDEN,  
Chief, U.S. District Judge, For The District of Vermont,  
at Montpelier, Vermont, 12 October 1976, on Defendant's  
motions to dismiss (No. 1) filed 9-24-76; to dismiss  
(No. 2) filed 10-5-76; to suppress, filed 9-24-76; and  
on Defendant's motions to suppress identification  
filed 10-5-76; to produce Grand Jury transcript,  
filed 10-24-76.

Appearances:

The Honorable JILL JACOBSON  
Assistant United States Attorney

MARTIN G. WEINBERG, Esquire  
DUNCAN F. KILMARTIN, Esquire  
JOSEPH OTERI, Esquire  
RICHARD WHITE, Esquire  
Attorneys for Defendant



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RUTLAND, VERMONT 05701

THE COURT: The Court will hear oral arguments on motions to dismiss both as to count, motion to dismiss #1 and motion to dismiss #2 before we proceed with the, - I take it an evidentiary hearing will be required in connection with the motion to dismiss.

MR. WEINBERG: Yes, as well as the motion to dismiss #2, Your Honor.

THE COURT: Very well.

MISS JACOBSON: Your Honor, if I might, before we get started with that, I have one or two very short preliminary matters I'd like to present to your attention.

THE COURT: Surely.

MISS JACOBSON: These, most of them came up last week at the hearing and these are things that the Government was supposed to look up but I would point out for the record that there have been no renewed requests for an independent analysis of the marijuana that was taken which was supposed to be filed as of October 8th according to your order. I would also note that the Government has contacted the Southern District of Florida and we were informed by Assistant U.S. Attorney McDONALD there that they have no record of any electronic surveillance of the defendant. Next, I would point, I would indicate that the Grand Jury returned the indictment in this case, was sworn in on July first 1976, the indictment was returned on July 22nd, 1976. I would also like to point out for the record that the defense counsel stated to me last week that he has no material available to us under Rule 16 B 1 A and B



including tangible objects, documents, et cetera that the defendant intends to use as evidence at trial. In addition, I'm not sure if this was made clear last week but as it has been the practice of this Court in the past regarding the names of witnesses to be called at trial, since the Government has been required to reveal its list of witnesses and we have done so, we would request the Court to make that a reciprocal requirement as well if the defense have witnesses they intend to call, we would like to be informed of that. Along the same lines, I think pursuant to the ruling of U.S. VS NOBLES, 95 Supreme Court 2160, the Government would also request copies before trial of any investigative reports or prior statements of defense witnesses who are going to testify at the trial.

I would also like to inform Your Honor that the Government has served a written demand for an alibi defense pursuant to Rule 12.1 on the Defendant. They had ten days to respond and those ten days were up yesterday so that the Government assumes that, at this point, that the defense has no intention of offering any alibi defense.

Lastly, I would ask the Court for clarification of your order on the requirement for the Government to turn over statements made by the defendant. Last week Mr. Weinberg mentioned a ruling in Crisona and I didn't have a copy of the case with me at the time. I have read it since and it seems to me that the ruling there applies as does Rule 16 to tape recordings or written statements by the defendant and reading other cases by the Second Circuit, even the most liberal



interpretation of the Rule 16 requirement, the turning over of statements, would apply only to statements that were made at the time the crime was committed and to no other statements before, or after.

So, we would request the Court, if it was not clear from last- week to limit the ruling on handing over statements made by the defendant to statements made at the time the crime was committed.

THE COURT: Do you wish to respond to these preliminary matters, Mr. Weinberg?

MR. WEINBERG: I do, Your Honor. Starting with the last first, motion for statements. Although the CRISONNA case on its facts dealt with a tape recording and the Court's holding was explicit that pre-arrest statements made on tape were, the Government had a requirement to disclose them to the defendants. The dicta in the case, in the case's adoption of an ABA project recommendation for all statements of the defendants, regardless to whom they were made, regardless of whether they were pre-arrest or post-arrest, must be disclosed. So that the facts of the case in CRISONNA are not identical to ours, the dicta and spirit of the case and the adoption on the very broad recommendation from the ABA project on discovery which I quote to the Court says it doesn't matter to whom the statements are made, be it to witnesses, be it to police officers, be it to the prosecutor or to the Grand Jury, they all should be disclosed.

~~That interpretation of CRISONNA was explicitly~~



adopted by Judge BLOOMENFELD, the Chief Judge of the District of Connecticut in the Case of the United States versus VILLA. The citation appears on the motion for statements. I don't have it available, I didn't know this was going to be reargued.

In VILLA, Chief BLOOMENFELD holds that it doesn't matter whether it's pre or post-arrest and moreover it doesn't matter whether or not the statements are made directly to law enforcement officers or whether they are made to potential Government witnesses who later will make them to law enforcement officers. The holding is that statements damaged defendants, regardless of who testifies to those statements in court and it's just as damaging if it comes out of the mouth of a witness as it does if it comes out of the mouth of a law enforcement officer. And I ask you consistent with CRISONNA and consistent with VILLA, to not vacate your order of last week and to require the Government to turn over any and all statements made by my defendant prior to his arrest regardless of whether or not they were made to police officers or to civilian witnesses.

MISS JACOBSON: May I have a word, Your Honor? I would point out that the VILLA case states that the defendant is entitled to the equivalent in writing of what he had to say, no matter how he said it, or to whom, agreed, with respect to the crime charged during the course of the crime. And that is the most liberal interpretation that Mr. WEINBERG is pointing out and I agree with it, but it does limit it to the commission of the crime. Even if that is pre-arrest it's during the

commission of the crime.

THE COURT: Anything further?

MR. WEINBERG: I just think that the VILLA holding is precisely what I said it was. Any statements that are relevant to the crime/<sup>made</sup>during the course of the events leading up to the crime or the crime itself, must be disclosed and the technicalities in the two minute period during the crime and statements that preceeded it may be preparatory to the crime, it doesn't make any sense when its just opposed to the law in CRISONNA and I WOULD AGAIN ask Your Honor not to vacate your order of last week.

THE COURT: The Court will let the order of the hearing made from the bench on last, I guess it was last Monday, the Court will let that order stand.

MR. WEINBERG: Thankyou, Your Honor, the only other pre-trial matter introduced by the United States Attorney today has to do with an alibi. I do not at this time have the details to supply the Government within its ten day letter. We are still researching the defendant's location on the date in question. It's more than a year ago. It provides difficulty in our investigation and as soon as we have that information, if we ever have it, I will supply the Government in detail.

THE COURT: Well the Court, the purposes of this proceeding, we take it, is not going to be any alibi defense filed. Or raised. Anything further?

MR. WEINBERG: That's all, Your Honor.

MISS JACOBSON: Your Honor, we would request



notification of defense witnesses, if they have any.

2 THE COURT: Yes, the Court intended if I didn't  
3 at the time, make the discovery reciprocal.

4 MR. WEINBERG: I would ask then that the Government  
5 give me a list of its witnesses and not simply state it's Mr.  
6 Roy, Mr. Perkins and other non-civilian witnesses. If we're  
7 going to provide them with witnesses I want the names and  
8 addresses of their witnesses. I want to know who their law  
9 enforcement officers are.

10 THE COURT: Well, I, - the Court will require you  
11 to disclose the names of the witnesses and I take it that you  
12 have ample means of identifying the witnesses that the Govern-  
13 ment has disclosed.

14 MR. WEINBERG: With due respect, Your Honor, I  
15 have not received a list of what law enforcement officers they  
16 intend to use and I asked for it. I don't think there is any  
17 reason, you know, consistent with the rules, why they shouldn't  
18 tell me who they are.

19 THE COURT: What do you say about that, Miss  
20 Jacobson? I assumed that they had been identified.

21 MISS JACOBSON: I had assumed they were, too.

22 MR. WEINBERG: They have not.

23 MISS JACOBSON: But -

24 THE COURT: Now, we won't tolerate any colloquy  
25 between counsel for the defendant and Miss Jacobson as the  
26 Assistant United States Attorney. If you have any remarks to  
27 make, they will be made to the Court.



MR. WEINBERG: I apologize, Your Honor.

THE COURT: And the Court will rule. But I'm not going to have any banter back and forth. I don't think Miss Jacobson has undertaken to address you directly and I don't expect that she will. Proceed.

MISS JACOBSON: Your Honor, there's no problem with supplying specific names if the Defendant would like them.

THE COURT: I think this discovery in this case - the Court has ruled on points of ruled up to now. I don't see any need to have counsel hasten back to the Court to try to referee this business. I think the Government has, in this District, has generally been cooperative and, particularly cooperative in disclosing information that would be helpful to getting the case ready for trial and I anticipate that that should be the pattern in this case. I anticipate that it will be.

You may proceed, Mr. Weinberg in regard to your motion. I don't take it that there is anything further for the Court to rule on Miss Jacobson, as far as the Government is concerned?

MISS JACOBSON: No, I have nothing else. Thank you, Your Honor.

THE COURT: Very well.

MR. WEINBERG: Directing myself to Motion to dismiss #2, Your Honor, I intend to proffer evidence, as my witnesses are present, to support the contentions contained in the motion. The first allegation has to do with the use of the



Grand Jury subpoena for the conducting of private interviews with the prospective witnesses and I would ask permission and leave from the Court to introduce a witness who will testify regarding that allegation.

Secondly, we have witnesses on the Motion to Suppress identification. Those witnesses will introduce facts which my speculation is, did not, in their entirety, be introduced to the Grand Jury. In other words, it's my assumption and I have not received the Grand Jury transcript and I am going to ask Your Honor to review it in camera to see whether or not the facts fit my assumption, that only the most inculpatory part of the identification process was introduced to the Grand Jury for its consideration, but not the exculpatory part and it seems to me that if the defendants have a right to a fair and impartial Grand Jury hearing and a right to review the evidence by a Grand Jury, a right for the Grand Jury to make a finding of probable cause, that they ought to have both the exculpatory and the inculpatory parts of the critical issue.

There is no question the crime was committed here, that somebody distributed 180 pounds of marijuana to Mr. Roy and to Mr. Perkins and distributed it to the D.E.A. agents. The question here in this case is the identity of the source of the marijuana and the Government saw fit to use photographic identification procedures which the evidence will demonstrate was suggestive, impermissibly so and I ask Your Honor to suppress it. But it's part of the suggestiveness of the procedure came, elicited various facts which did not inculcate the defendant and



I would ask Your Honor to review the Grand Jury transcript and see whether the Grand Jury got the whole picture, because if they didn't, I respectfully suggest that the Grand Jury process and procedure was fatally tainted and the indictment must be dismissed.

THE COURT: You may proceed.

MR. WEINBERG: The third motion deals with tape recordings, the third part of the motion to dismiss, deals with tape recordings. I will introduce affirmative evidence that the Government had a tape recorder, or a tape recording which it will introduce with respect to one of its witnesses, or prospective witnesses and the Government informs me that it does not have one and it seems to me that the inference is that if Your Honor finds the witness credible and finds there were tape recordings, I think Your Honor can draw presumptions and inferences to the content of those tape recordings and it is a preservation of the evidence. I think as an entirety, when you look at the identification procedures, when you look at the use of the Grand Jury subpoena, when you look at the introduction of the testimony of the Grand Jury, it's the defendant's motion that the case ought to be dismissed. Either on any of the one grounds, specifically or in the totality of the preparation of the case by the Government.

In terms of the motion to dismiss #1 I rely on the memorandum of law in the cases cited and I candidly say that many of the allegations I believe in them, but the Second Circuit has already turned me down.



THE COURT: Motion to dismiss presented in form  
#1 is denied. We'll allow you to proceed as to the second  
motion.

MR. WEINBERG: May I ask a for a sequestration  
of witnesses, Your Honor?

THE COURT: Yes, we'll allow the motion to se-  
quester witnesses on this present hearing.

MISS JACOBSON: Your Honor, we would request that  
the AGent be allowed to stay..

THE COURT: Yes, we'll allow the agent in charge  
and the Drug Enforcement Administration to remain.

MISS JACOBSON: Thank you, Your Honor.

MR. WEINBERG: If I can be heard briefly, Your  
Honor, this agent is the other witness who is central to the  
identification.

THE COURT: the Court will allow the agent in  
charge to remain.

MR. WEINBERG: Note my objection, please.

THE COURT: We'll note your objection.

MR. WEINBERG: Call Victor Roy.

V-I-C-T-O-R                      L-O-U-I-S                      R-O-Y, called as a wit-  
ness by the Defendant, being duly sworn by the  
Clerk, testified on his oath as follows:

DIRECT EXAMINATION BY MR. WEINBERG:

Q. Your name, sir?

A. Victor Louis Roy, Junior.

Q. And your present address?



A. Box 524 "Nortown" Vermont.

Q. Are you the same Victor ROY sir who was arrested on July 18, 1975?

A. Yes.

Q. And were you subsequently charged by a Federal indictment with distributing and conspiring to distribute marijuana?

A. Yes.

Q. Directing your attention sir to July 18, 1975, were you arrested on that day?

A. Yes, I was.

Q. Were you subsequently brought back to a building in the Burlington area?

A. Yes, I was.

Q. And where were you brought to?

MISS JACOBSON: Your Honor, if I may be heard for a moment, we are directing ourselves at this point to the first point made in the motion to dismiss #2 that the Government might abuse the Grand Jury subpoena power?

THE COURT: I understood that that's what Mr. Weinberg said.

MR. WEINBERG: I apologize, I thought that you wanted evidence on the whole motion to dismiss #2 at this time.

THE COURT: Well, we'll allow you to go ahead and present the matters that you wish to bring to the Court's attention in support of your motion to dismiss in the manner that



1 you see most acceptable.

2 MR. WEINBERG: Thank you, Your Honor. If Your  
3 Honor Please, may I also introduce evidence at the same time  
4 on the motion to suppress identification testimony? There's  
5 an over-lap.

6 THE COURT: Very well.

7 MR. WEINBERG: This witness is one of the two  
8 witnesses on that motion as well.

9 BY MR. WEINBERG:

10 Q. On July 18, 1975, did anyone attempt to interview you?

11 A. Yes.

12 Q. Who was that, sir?

13 A. Special Agent HANDOGA.

14 Q. And is he, do you see the gentleman in court?

15 A. Yes, he's here.  
did

16 Q. Where/that attempt occur?

17 A. It occurred at D.E.A. headquarters, I believe, in  
18 Williston, Vermont.

19 Q. And is Williston near Burlington?

20 A. Yes.

21 Q. About when did that occur, sir, on July 18th?

22 A. Right after our arrest, 10:30 at night.

23 Q. Where in the headquarters did this interview occur?

24 A. In Mr. Handoga's office.

25 Q. Was anyone else there but you and Mr. Handoga?

26 A. No, there wasn't.

27 Q. Did you see any objects in Mr. Handoga's office, that you



noticed, in particular?

A. On that occasion?

Q. Yes.

A. It was quite a bit of equipment in the office, electronic equipment, tape recorder, that sort of thing.

Q. Did you see a tape recorder there?

A. Yes, there was a tape recorder there, right on the desk.

Q. It was on the desk?

A. (Nodded)

Q. Where were you sitting in relationship to the tape recorder?

A. Right next to it.

Q. Did you see whether or not the tape recorder was on?

A. The tape recorder was on.

Q. And what do you base that statement on, sir?

A. I saw Mr. Handoga punch some buttons on it and saw the wheels spinning around and there was a microphone right out there.

Q. You saw, you made a personal observation of the wheels spinning around?

A. Uh huh.

Q. And you saw Mr. Handoga push the buttons?

A. Uh huh.

Q. Did the pushing of the buttons generate the wheels?

A. I think it might have been on when I came in there and he hit the buttons to record, or something. I don't know how the tape recorders work.

Q. Were the wheels going after he pushed the buttons?



A. Yes, the wheels were going.

Q. Sir, you ultimately pled guilty to those charges, did you not?

A. Yes.

Q. In March of 1976?

A. Yes.

Q. That was before Judge COFFRIN in Burlington?

A. Yes.

Q. Between your arrest on July 18th 1975 and the time you were sentenced on March 29th, 1976, were you ever interviewed again by Drug Enforcement Administration?

A. No, I wasn't.

Q. When were you next interviewed by D.E.A. sir?

A. The morning of July first, 1976.

Q. At any time between 18th, 1975 and July first 1976, did you ever relate your recollection of transaction involving 180 pounds of marijuana into writing?

A. Between the time of my arrest -

Q. Between the time of your arrest and the time of July first '76, did you ever offer a statement as to your recollection of the events?

A. This was after I pled guilty, right? I had to fill something out for the probation office as to my idea of what happened. But that was all. A statement of a page or two.

Q. Between the time of your arrest and the time you were sentenced were you ever shown photographs, sir?

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A.44.



1 A. No.

2 Q. Between the time of your sentencing in March of 1976 and  
3 July first 1976, were you ever shown photographs?

4 A. No, I wasn't.

5 Q. Directing your recollection back to the time of sentencing,  
6 do you recall your attorney making any promises to the  
7 Court or the U.S. Attorney at that time?

8 A. Yes, I believe so.

9 Q. What were those promises?

10 A. Just that you, just that I would try to be as cooperat-  
11 ive with the Government as I could be.

12 Q. And the Government didn't ask you for any cooperation between  
13 the time of that sentence on July first, 1976, is  
14 that correct?

15 A. That's right.

16 Q. So, directing your attention to July first 1976, why were  
17 you in Burlington on that occasion?

18 A. I was answering a subpoena.

19 Q. When was that subpoena served upon you?

20 A. I think three days beforehand.

21 Q. Do you recall the time the subpoena asked you to arrive in  
22 Burlington?

23 A. It said 9:00 a.m.

24 Q. Did you arrive in Burlington at 9:00 a.m.?

25 A. I think I did, yes, sir.

26 Q. Where did you go sir?

27 A. I went to the Clerk of the Court.



1 Q. What happened in the Clerk of the Court's office?

2 A. I showed him the subpoena and asked him where I should  
3 go and he directed me to the U.S. Attorney's office.

4 Q. What happened at the U.S. Attorney's office, sir?

5 A. I walked in there and Mr. HANDOGA was there and one  
6 other person and the secretary and I sat down for oh,  
7 about an hour, just waiting for something to happen and  
8 then after that, Mr. HANDOGA and JEROME O'NEILL took  
9 me to a small interview room and started to interview  
10 mw.

11 Q. That was Mr. O'Neill the Assistant U.S. Attorney?

12 A. Yah.

13 Q. Did they read you your rights at that time?

14 A. No.

15 Q. Did they advise you you had a right to remain silent at  
16 that time?

17 A. No, they didn't say anything about that to me.

18 Q. Why did you submit to an interview at that time, sir?

19 A. Because the subpoena said that I had to come to  
20 Burlington that morning at 9:00 a.m. and talk to the  
21 Government agencies.

22 Q. Did you feel that your being interviewed by Agent HANDOGA  
23 and Mr. O'NEILL was part of your obligation pursuant  
24 to the Grand Jury subpoena?

25 A. That's what I thought the whole thing was about, that  
26 I had to go and talk to these people.

27 Q. And you - were you later brought to the Grand Jury?



A. That afternoon, yes.

Q. But for the Grand Jury subpoena would you have been in Burlington in the U.S. Attorney's office July first 1976?

A. Certainly not.

Q. Did you have any understanding that a Grand Jury testimony or an interview with the U.S. Attorney and a D.E.A. agent were separate and distinguishable?

A. I thought it was all one and the same. I thought that the reason why I was there was in answering to a subpoena and the procedure was that I had to talk to these people and then everything went on.

Q. Did either Mr. O'Neill or Agent HANDOGA or any representatives of the Government, advise you that you had a right not to be interviewed prior to testifying to the Grand Jury?

A. No.

Q. Were you advised as to any of your various constitutional rights at that time by any government representative?

A. No.

Q. Directing your attention to July first 1976 sir, at what time did your interview commence?

A. I would say 10:00 o'clock maybe.

Q. Now what time were you first shown photographs on that day?

A. Oh, maybe three-quarters of an hour afterwards.

Q. Directing your attention to that approximately forty-five minutes period sir, were you asked to give a full and



1 complete physical description of the individual who  
2 distributed 120 pounds of marijuana to you back in  
3 July of 1975?

4 A. No, I wasn't.

5 Q. Did you volunteer such a description?

6 A. No.

7 Q. On any occasion prior to your being shown photographs, were  
8 you ever asked by any Government representative to give  
9 a full and complete description to, of the individual  
10 who distributed the marijuana to you?

11 A. No.

12 Q. And is it fair to say that you never volunteered such a  
13 description?

14 A. No, I never did. The first time that I ever met, well,  
15 July 18, 1976, when I went into the room, Mr. Handoga's  
16 office there, he was asking me to do everything. To  
17 identify everyone to, you know, asked me where I got  
18 the marijuana and everything and they told me that I  
19 didn't have to answer any questions without a lawyer.  
20 So that's, that's, that was my position at that point.

21 Q. Did you see the same tape recorder on July first 1976?

22 A. There was a tape recorder there, yes.

23 Q. Where was it?

24 A. I think it was in his brief case or in - his brief  
25 case was right out on the table there.

26 Q. Did you see the tape recorder in the brief case?

27 A. Yes, I saw the tape recorder.



Q. Sir, during your interview with Special Agent HANDOGA and prior to showing photographs, did you and Agent HANDOGA have a conversation about the marijuana transactions of 1975?

A. Yes.

Q. Did Agent HANDOGA indicate he was in possession of any information regarding that?

A. Yes, sir.

Q. Tell us what happened, sir?

A. Well, I got in there and -

THE COURT: You're talking about the -

A. Talking about July first 1976 prior to the Grand Jury. Prior to my going into the Grand Jury.

Q. Sir, you just direct yourself to the time prior to being displayed the photographs, that 45 minutes area.

A. Well, Officer HANDOGA was completely full of information as regards to what happened in distributing the marijuana, what happened in a few situations beforehand and was more or less telling me the facts and asking me to agree with them.

Q. Did he ever mention the name, well, strike that. Did you ever mention the name MARCHAND?

A. No I didn't.

Q. When is the first time you heard the name MARCHAND in connection with July first 1976?

A. At the photographs.

Q. Who told you the name MARCHAND?



1 A. Mr. Handoga.

2 Q. During this conversation prior to being displayed photo-  
3 graphs, -

4 A. Yes.

5 Q. - between you and Agent HANDOGA, did you conclude that  
6 Agent HANDOGA knew a lot about the activity which led  
7 up to your being arrested on July of '75?

8 A. Yes, he told me what -was going on, rather than I  
9 telling him.

10 Q. Did Agent HANDOGA indicate that he knew the identity of  
11 the person to whom, who distributed the marijuana to  
12 you?

13 A. He seemed very confident that he knew just about  
14 everything about the case.

15 Q. Did Agent HANDOGA take out a series of photographs?

16 A. Yes.

17 Q. Did you assume that one of the photographs was the individ-  
18 ual who Agent HANDOGA believed to be the source of the  
19 marijuana?

20 A. Yes, that is why he would have the photographs.

21 Q. And that assumption also was a result of his indicating to  
22 you that he had a lot of knowledge about the case?

23 A. Yes.

24 Q. By the way, you were on probation at this time?

25 A. Yes.

26 Q. What was your attitude toward Special Agent Handoga on July  
27 first 1976?



A. Well, I felt that I had to cooperate with Mr. Handoga because he could put me in violation of my probation or, I just didn't, I wanted everything to run smoothly with my probation, I felt that I should, you know, try to cooperate as best as I could.

Q. Were you interested in pleasing AGent HANDOGA that day?

A. Well yes, I don't want to cross him because he might make it hard on me for, you know, for probation office or, -

Q. May I approach the Clerk please for the purpose of having pictures marked, Your Honor?

THE COURT: Yes.

(Defendant's Exhibits "C" through "P" are photographs marked for identification)

MR. WEINBERG: May I approach the witness, Your Honor?

THE COURT: Yes.

Q. I show you Defendant's Exhibit "C" through "P" and ask you whether or not those are the same photographs you were shown on July first 1976 by Agent Handoga?

A. Some of the ones are the same but I think there's a couple missing or a couple of changes.

Q. Are there pictures in the Defendant's Exhibits "C" through "P" that you don't recognize?

A. Recognize as, as what?

Q. As having been present in the display shown to you on July first 1976?

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1 A. There are a few in there I don't think I have seen  
2 before.

3 Q. And are there pictures, and I am directing you just to the  
4 photos that were originally shown to you at the  
5 beginning of the photographic exchanges on July first,  
6 that are not present here to the best of your recollec-  
7 tion?

8 A. Would you re-state that?

9 Q. I am only interested at this time in the photos that were  
10 shown to you in the original series given to you on July  
11 first 1976 by Agent Handoga. Not those later shown  
12 to you. Are there photos, to the best of your recollec-  
13 tion that are missing from this group here?

14 A. From the first series of them?

15 Q. Yes, sir.

16 A. I think there's a couple missing, yes.

17 Q. In any case sir, directing you to the time of the photo-  
18 graphic display, were the photos mounted like this?

19 A. No, they weren't.

20 Q. So the photos were not mounted on index card type of paper  
21 as they are now?

22 A. I don't think they were mounted on these backings  
23 here, these things here. I think these things were.

24 Q. In any case sir, were you asked to review the pictures?

25 A. Yes.

26 Q. By Agent Handoga?

27 A. Yes.

Q. Did he give you all the time you needed to look through them?

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A. Yes.

Q. Did you study each and every picture that was shown to you?

A. Yes, I did.

Q. And were you asked to identify what Agent Handoga asked you to do?

A. He asked me if I could recognize any of the people in these pictures.

Q. And did you select any of the pictures originally shown to you, as a person you recognized?

A. Yes, there was one picture I recognized.

Q. And do you see that picture in the pile?

A. Well, I think it's not here. I, I did, I recall I did identify one picture, I thought it was someone I knew from Burlington area.

Q. Who was the person who you thought it was?

A. I thought it was Jim HATHAWAY.

Q. Did you tell Agent Handoga that?

A. Yes.

Q. And what did he say to you?

A. He said, no, it wasn't. He said it wasn't Jim Hathaway.

Q. When you first went through the pictures for the first time, did you identify any other photographs?

A. No.

Q. Did you recognize anyone else in the photographs, sir?

A. No.

Q. What then happened after you and Agent Handoga had a conversation regarding Mr. Hathaway?



1 A. I went through them again.

2 Q. Why did you go through them again?

3 A. Well, he had asked me to go through them again. Are  
4 you sure you don't recognize anyone in there? You  
5 know, pressing me to identify someone in there. Again,  
6 I picked out the picture I thought was Jim Hathaway  
7 and he said no, it wasn't, and,

8 Q. What was your feelings during this time as you went through  
9 them again?

10 A. Well, it appeared to me that I was supposed to identify  
11 somebody in that series of pictures.

12 Q. Could you identify anyone with the exception of the one  
13 Hathaway picture?

14 A. No, I couldn't.

15 Q. What did you next say to Agent Handoga after reviewing the  
16 pictures for a second time?

17 A. Okay, I looked through them the second time, picked out  
18 Jim Hathaway's picture, well, it wasn't him, his picture  
19 and flipped through them and one of the pictures looked  
20 strange to me. I think it was this one here..

21 Q. That's Defendant's Exhibit "C"?

22 A. Yes.

23 Q. And what did you say to AGent Handoga regarding that picture?

24 A. I just said, "this picture looks funny," or something  
25 to that effect.

26 Q. Now before you said that, sir, what was your perception of  
27 Agent Handoga's behavior as you went through the



photographs and picked out Mr. Hathaway's photo?

A. Well, my idea was, he was pressing me to identify somebody in this series of pictures and "are you sure, please, go through them again," and, "take your time, look through the again." I picked out Hathaway's picture or who I thought was Hathaway and he says, "No, that is not him," and I just felt that you know, something had to be done.

Q. So what did you do, did you set one picture aside?

A. I said, this picture looks funny, this picture looks,

Q. What did AGent Handoga say when you said Plaintiff's Exhibit "C" looked funny?

A. Well he grabbed it from me and looked at it and pulled out a big picture from his brief case.

Q. What was your perception of his attitude after seeing the picture you thought was funny, from the time he took the big picture out of the brief case?

A. Well, it was like his opened and you know, threw it at me and says, "how is this one?" "How about this one?"

Q. I show you Defendant's -

A. You know, "is this one any better?"

Q. - Exhibits "A" and "B" and ask whether either or both of those pictures he took out of his brief case, sir?

A. I think this one was, sir.

Q. That's Defendant's Exhibit "A"?

A. (No response)

Q. What did he say when he took Defendant's Exhibit "A" out



1 fo his brief case?

2 A. He said, "OK, here's a Bob, what about this one?"

3 Q. Now prior to showing you that photograph, was there discus-  
4 sion between you and Agent Handoga that the name  
5 of the person who gave you the marijuana which you were  
6 subsequently arrested with by the name of "BOB"?

7 A. I, yes, I knew him as "BIG FOOT" or "BOB" I knew his  
8 first name was BOB and those are the only names, you  
9 know, those are the only names I used.

10 Q. And he said "This is a picture of Bob" when he showed you  
11 the photo?

12 A. Yes.

13 Q. What did you say in response to being shown this photo, sir?

14 A. I said, that, you know, looks, looks similar.

15 Q. What was his reaction when you said that, sir?

16 A. He asked me to initial it, I think.

17 Q. Did he express any pleasure or displeasure over your having  
18 shown recognition to Defendant's Exhibit "A"?

19 A. <sup>ah,</sup>  
~~HE~~ said, /that's Marchand.

20 Q. What, - was that the first time he had mentioned the name  
21 MARCHAND to you?

22 A. Yes.

23 Q. It was the first time that you had, that the name MARCHAND  
24 had been discussed on July first, 1976?

25 A. Yes.

26 Q. You had never on any occasion, mentioned the name MARCHAND  
27 TO HIM?



1 A. No.

2 Q. Is that right?

3 A. Yes, that's correct.

4 Q. The Defendant's Exhibit "C", which you said looked funny,  
5 was included in the display on both, on the first  
6 occasion when you went through it and identified Mr.  
7 Hathaway, is that right?

8 A. Well, he handed me a bunch of pictures. They were all  
9 the same size.

10 Q. That's "C" through "P"?

11 A. Yes.

12 Q. And maybe others that you don't see now, is that correct?

13 A. Right.

14 Q. Was Defendant's Exhibit "A" included in the original display  
15 you were shown by Agent Handoga?

16 A. No, it wasn't. He pulled it out of his brief case.

17 Q. It was pulled out alone or with other pictures?

18 A. No, just that one.

19 Q. Was it singled out by him?

20 A. Well, it was the only one he pulled out of his brief  
21 case.

22 Q. When he pulled it out of his brief case, -

23 A. That one wasn't.

24 Q. Have you seen, have you ever seen Defendant's Exhibit "B"  
25 before?

26 A. No, that definitely wasn't there.

27 Q. If I could show the photos to the Court?



THE COURT: Yes.

Q. Sir, when he took the Defendant's Exhibit "A" out of his brief case, what was your understanding of Agent Handoga's desires? How did you perceive that?

A. Well, that was, I mean, why, why would he have another picture of that one in his brief case? It just, you know, that was obviously the one that was to be identified.

Q. And before you saw the picture, this, the man depicted in that picture was named Bob, is that correct?

A. He said "Bob."

Q. And you knew that it was a Bob that was the source of the marijuana, is that right?

A. Right.

Q. By the way, sir, when you went through the pictures, were any of the pictures initialed "RP" when you went through them?

A. Yes.

Q. What did "RP" mean to you when you went through them?

A. It was "RWP".

Q. And what did "RWP" mean to you when you went through them?

A. Richard Wayne Perkins. You know, it was, I think there was one picture initialed that.

Q. And where were those initials, sir?

A. (No response)

Q. Were they on the face of the picture?

A. Yes.



Q. Sir, did Agent Handoga, ask, pick, select out any other photograph and ask you whether you thought any photo was familiar with the exception of the Defendant's Exhibit "A"?

A. Any other photographs? There was a picture of a girl, who was the only girl in the line-up.

Q. Can you tell us the conversation between you and Agent Handoga regarding the only picture in the line-up which referred to a woman?

A. Well, it looked, it looked like a girl that was with Bob at one time.

Q. And what did you say?

A. Well, I said that looks something like -

Q. These were not positive identifications of either the picture in Defendant's Exhibit "A" or the woman, they looked like someone, is that correct?

A. That's right.

Q. Did you get the feeling AGent Handoga wanted you to select any other picture?

A. He kept pressing me to identify someone else who I had seen for just moments at the time of, back on July 18th.

Q. How did he question, or how did he press you? What do you mean by that when you say that, sir?

A. Well, he was asking me about someone who was dark complected, I remember him saying, "Does he have a full beard," did this other person have a full beard? And he said, "I don't have a full beard and you don't



1 have a full beard." You know, a fit tight beard,  
2 you know a thick type beard, you know, stubble or  
3 whatever and just pressed me and pressed me for an  
4 identification of another picture of another person  
5 and I just couldn't recognize anyone else.

6 Q. Did he ask of you a line-up sir?

7 A. No.

8 Q. Sir, while the photographs were being displayed to you,  
9 did you see AGent Handoga take any notes?

10 A. Notes?

11 Q. Was he writing at all?

12 A. I think he had a writing pad.

13 Q. Did you notice him putting anything on the writing pad?

14 A. I can't say yes or no. I, - he was probably taking  
15 notes.

16 Q. Sir, you have been interviewed by myself on two or three  
17 occasions, is that correct?

18 A. Yes.

19 Q. Have I or any of my representatives or the lawyers with me  
20 ever threatened you?

21 A. No.

22 Q. Ever promised you anything?

23 A. No.

24 Q. Have you been given any rewards of any kind?

25 1 A. Certainly not.

26 Q. Did we ask you to come here and testify to the truth and noth-  
27 ing but the truth?



A. You did.

Q. May I have a second, Your Honor?

THE COURT: Yes.

MR. WEINBERG: Thank you, Mr. Roy.

CROSS EXAMINATION BY MISS JACOBSON:

Q. I'd like to go back to July 13, 1975 that was the day you were arrested, is that right?

A. Uh huh.

Q. You went back to the D.E.A. office, is that right?

A. Yes.

Q. And you just testified that you saw a tape recorder in that office?

A. Yes.

Q. Do you know if there was any tape on that tape recorder?

A. Well, when you see the reels going around and it was like a cassette recorder with a cover over it so you really couldn't see whether there was any tape going through it because the tape has a, obviously within the -

Q. Well was there a window, was there a window on the top of it?

A. Yes, there's a small window where you can see the -

Q. If there was any tape on the reels it would show up on that window, isn't that correct?

A. Well, not necessarily, you couldn't see the ends of the reels, it's just a small window.

Q. And could you see the spools of the reels that would have been turning around?

A. You can see them. Yes, you could see them.



1 Q. Well, if you could see the spools then I would suggest that  
2 you could also see the tape since the tape has to go  
3 around the spools, isn't that correct?

4 A. Well, I would suggest to you that if you put a tape  
5 recorder over here about eye level, with just a window  
6 and see if you can see the tape on the reels. All I  
7 could see was the reels going around.

8 Q. Did you ever hear any tape played back to you?

9 A. No.

10 Q. So you've never heard any tape recording that was made that  
11 day, is that correct?

12 A. No, I haven't.

13 Q. So then you really aren't positive that any tape recording  
14 was made that day, isn't that correct?

15 A. Well, now, when you see the microphone out, like there's  
16 a microphone here and you see a tape recorder and you  
17 see the wheels going around, why would that be happen-  
18 ing? If there wasn't tape in the recorder?

19 Q. There are plenty of things that could be happening as far  
20 as recording, Mr. Roy. You say you are not sure there  
21 was any tape on there, you've said that you have never  
22 heard any tape recording played back to you. I am now  
23 asking if you are positive if a tape recording was made  
24 that day?

25 A. What can I say? I mean, - I -

26 Q. You can say yes or no, Mr. Roy. Are you positive or not?

27 MR. WEINBERG: I object.



THE COURT: We'll allow the witness to answer the pending question without any further elaboration.

A. You're asking me if I can -

THE COURT: The reporter will read the question back.

A. Oh, I see.

(REPORTER READ LAST QUESTION BACK ALOUD)

A. Well, I can't say I was positive that there was a tape recording made that day because the only way I could be positive that there was a recording made was to hear a recording made.

Q. So you are not positive?

A. That's right, I am not positive.

Q. Now, what was AGent Handoga talking to you about?

A. In that office?

Q. In that office on July 18th.

A. Okay, he asked me, all right, who gave you the pot? Where did it come from? Asking me all these questions relative to where, you know, we had received it.

Q. All right, and did you give Mr. Handoga any answers to those questions?

A. No, I didn't.

Q. No, you didn't, didn't you in fact, didn't you state to AGent Handoga that you did not want to answer any questions but that you would talk to him only after you had a lawyer?

A. That's right.



1 Q. So that even if there was a tape recording going on there  
2 were no statements made by you that could have been  
3 recorded, isn't that correct?

4 A. Well, he kept, -

5 Q. Answer the questions, Mr. Roy, just what I asked you.

6 A. Could you repeat?

7 Q. Did you make any statements that could have been recorded  
8 if there had been a tape recorder going?

9 A. I did have words, yes. So they could have been recorded.

10 Q. Did you speak to AGent Handoga and tell him anything about  
11 the crime for which you had been arrested?

12 A. No.

13 Q. That you, Mr. Roy. Now, you were subpoenaed to appear  
14 before the Grand Jury on July first 1976, is that correct?

15 A. Yes.

16 Q. Now, would you tell us where you were in the Spring of this  
17 year 1976, before you appeared before the Grand Jury.  
18 WERE you in Vermont all that time?

19 A. Yes.

20 Q. You haven't spent any time out in COLORADO recently?

21 A. Well, I was in Colorado again last season.

22 Q. And when were you in Colorado?

23 A. In the Spring, I left on March 22nd.

24 Q. So that you were not in the State of Vermont during the  
25 Spring of this year, is that correct?

26 A. Well I was gone from the end of March until the begin-  
27 ning of May.

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Q. All right and then after you came back you were served with a subpoena sometime at the end of June to appear before the Grand Jury?

A. Yes.

Q. And that subpoena said to appear there at 9:00 a.m., is that correct?

A. That's correct.

Q. On July first?

A. Yes.

Q. And in fact on July first in the afternoon, did you make an appearance before the Grand Jury?

A. In the afternoon, I did.

Q. You did. Now, you stated before that you were told when Agent Handoga was talking to you with Mr. O'Neill, I believe, that you didn't have to answer any questions without your lawyer, is that correct?

A. What was that again?

Q. You stated a little earlier when Mr. WEINBERG was questioning you, that when you were talking with Mr. O'Neill and Agent Handoga, before you appeared in the Grand Jury, that you didn't have to answer any questions without a lawyer?

MR. WEINBERG: I object, Your Honor, that was conversation about July 18th, 1975, not July first, '76.

MISS JACOBSON: No, I believe there is testimony on the record saying that -

THE COURT: We'll allow you to ask the question,



1 Miss Jacobson.

2 A . Once again, could you repeat that?

3 Q. Sure, YOU came to the U.S. Attorney's office July first?

4 A. Right.

5 Q. Right. And you sat around in the office for about an hour  
6 is that right?

7 A. Right.

8 Q. And then Agent Handoga talked to you for a while, is that  
9 right?

10 A. Right.

11 Q. Then after he was talking with you and he showed you  
12 photographs, I believe that you said Mr. O'Neill came  
13 in and spoke to you for a while?

14 A. Right, Mr. O'Neill was in and out. He was really busy  
15 that day, I guess.

16 Q. Okay, when he came in and Agent Handoga was there, did Mr.  
17 O'Neill say to you that he was going to take you to the  
18 Grand Jury and this is what he's going to be asking you  
19 and then he proceeded to tell you the kind of things  
20 that he would be asking you in the Grand Jury?

21 A. Right.

22 Q. And didn't he tell you at that time that you did not have  
23 to answer any questions right there, without a lawyer  
24 present?

25 A. He didn't say that.

26 Q. All right, I believe, Your Honor, I don't believe there was  
27 some testimony before but we'll let the record stand.



Q. And did you answer any questions at that time?

A. Yes.

Q. So did Mr. O'Neill ask you to, things that he said he was going to ask you in the Grand Jury?

A. Yes.

Q. Now, when you talked to Agent Handoga before you went into the Grand Jury?

A. (Nodded head)

Q. You have said a lot of things about your feelings about Agent Handoga's attitude, and that Agent Handoga was pressing you for identifications and that he was expecting you to say certain things?

A. (Nodded head)

Q. Did you feel that Agent Handoga was expecting you to lie?

A. No.

Q. All right now, if you felt when he showed you the first pictures, well, let me look at the pictures before I ask the question. May I have a minute, Your Honor?

THE COURT: Yes.

Q. Mr. Roy, you have stated that you assumed that one of these pictures that you were shown had to be identified, as the source of the marijuana, is that correct?

A. Well, I thought that was the whole point of the whole array of photographs.

Q. And you eventually picked out what's been marked as Defendant's Exhibit "C", is that correct?

A. After a couple of times through the pictures that's the



one that looked strange to me, you know.

THE COURT: Well, what do you mean by "strange"?

A. Well, there was just something about it, it just looked kind of strange.

THE COURT: Did it look strange, familiar, or what?

A. I don't know. Vaguely familiar maybe, or, -

Q. Did you state that to Agent Handoga?

A. I don't know. Something to that effect, maybe.

Q. And can you tell me what appears on the front, lower border of that picture?

A. He said, okay, I want you to initial the corner. I said, okay. I initialed the corner.

Q. And did you at that time know what name the person in this picture went by?

A. No.

Q. You couldn't put any name together with that picture?

A. At that time I just said something looked funny about the picture.

Q. You couldn't put any name with it at all?

A. Not at that time.

Q. On July 18th, 1975, when you obtained the marijuana, the person that you obtained it from, did you know him by any name?

MR. WEINBERG: I object, Your Honor.

THE COURT: Objection over-ruled.

MR. WEINBERG: Your Honor, may I state the basis for my objection?

A. Yes.

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THE COURT: Yes.

MR. WEINBERG: On direct testimony, Your Honor, I was very explicit to keep this just to the interviews that were being made. This man doesn't have a counsel here, he's being asked questions about underlying transactions that can incriminate him. I was careful to stay away from anything incriminating and restricted myself to, just to the interviews of the law enforcement officers, and I do feel that the Court at least ought to advise him as to his rights when he is asked questions as to what happened on July 18th as opposed to what the discussions with the D.E.A. agents were.

THE COURT: Objection over-ruled. You may answer the question.

Q. Do you remember the questions, Mr. Roy?

A. No, I don't.

Q. All right, we are going back now to July 18, '75.

A. Right.

Q. When you obtained the marijuana.

A. Uh huh.

Q. The person that you obtained it from, do you know that person by any particular name?

A. I don't know what to say. I would really like to consult a lawyer on these topics. I really don't want to answer that.

THE COURT: You had a lawyer in connection with the offense that occurred on, in July 18th, 1975?

A. Yes.



THE COURT: Who was your counsel?

A. Peter Langrock.

THE COURT: Well, do you wish to consult with him?

A. I would like to consult with an attorney on all these questions here.

THE COURT: Well, is there any reason to think that this goes beyond the offense for which the defendant was, which Mr. ROY was tried and convicted?

MISS JACOBSON: Well, it may be possible at this point, Your Honor.

THE COURT: Pardon?

MISS JACOBSON: It's possible at this point that something may come up, yes. I think Mr. ROY should be advised as to the penalties for perjury.

THE COURT: Well, of course, you understand that any false, - you're under oath and any statement made that is false and material to the matter that is now before the Court you could be prosecuted for perjury. You understand that?

A. Yes.

MR. WEINBERG: May I just note my objection, Your Honor?

THE COURT: Yes.

MR. WEINBERG: And also, if he is going to be advised of his rights asking, advise him that he has a right that he may be incriminating himself of State marijuana offenses as well as Federal marijuana offenses. In other words, he's never been granted immunity by the State of Vermont and it seems to



me that - - I've stayed away from these transactions because I understood this witness' problems with self-incrimination and I sincerely believe that you know, that the questions going to the underlying transaction apartt from any perjury, which I feel is, you know, I object to comments like that towitnesses, because of intimidation effects that it may have. But I really feel that when you get to the underlying transactions without the full grant of immunitywhich is perfectly available, the Government can certainly immunize witnesses that it's an area fraught with danger and one which I stayed away from in consideration of this witness' constitutional rights.

MISS JACOBSON: Your Honor, we are referring to the identification that this witness has made of the defendant in this case. The Government feels that we are obligated to show to some extent that there was some prior acquaintanceship with the defendant and that there is no reason to believe that this witness could not identify the defendant from the photographs which he was shown.

THE COURT: The Court will allow the question. Do you have the question in mind?

A. What was the question?

Q. The question was the name of the person who supplied you with the marijuana.

THE COURT: I don't think that is the specific question, would you read it Mr. Vesper?

(REPORTER: "All right, we are going back to July 18, '75 when you obtained the marijuana, do you, the person that you



1 (obtained it from, do you know that person by any particu-  
2 lar name?)

3 A. Once again, I really don't, I'd really like to get some  
4 consultation and I don't want to incriminate myself  
5 at all, so I'm not going to answer that.

6 THE COURT: Well, I understand that this particular  
7 transaction is the one that was brought in the United States  
8 District Court For The District of Vermont and the offense  
9 to which you, the defendant, entered a plea of guilty and was  
10 subsequently sentenced?

11 MISS JACOBSON: That is correct, Your Honor.

12 THE COURT: Now, confining your answer to that  
13 particular question the Court sees no way that that can incrim-  
14 inate the witness.

15 MR. WEINBERG: Can I ask the Government whether  
16 or not it is granting immunity for the witness on these State  
17 offenses which are identical to the Federal offense? Certainly  
18 if he transacted the marijuana in the State of Vermont then  
19 the statute of limits hasn't run yet and - -

20 MISS JACOBSON: None, Your Honor.

21 THE COURT: There have been no -

22 MISS JACOBSON: No immunity has been granted in  
23 this case.

24 THE COURT: Well, we'll sustain the objection then.

25 Q. All right, let me ask you this one, Mr. Roy, did you know  
26 the man that you got the marijuana from and did you  
27 recognize him?



1 A. What was that again?

2 Q. Well, I assume that you were meeting someone to obtain the  
3 marijuana. Did you recognize this man when you met him?

4 A. I don't know if I want to answer anything further. If  
5 you told me that anything I can say can be used against me  
6 and perjury suit or something.

7 THE COURT: Well, the only way it can be used  
8 against you as far as the Federal Court is concerned is if you  
9 make a statement that is false. If you make a false statement,  
10 of course you can be prosecuted for perjury and I believe you  
11 understand that.

12 A. (Nodded)

13 THE COURT: Very well.

14 MR. WEINBERG: But on the objection, Your Honor,  
15 at this point I make it respectfully and that is when the United  
16 States Attorney asks the Court to question someone about perjury  
17 then that -

18 THE COURT: The witness brought this up himself.

19 MR. WEINBERG: Yes, but the U.S. Attorney asked the  
20 Court instruction on perjury. That can scare a witness who  
21 doesn't have a lawyer, Your Honor, cause it indicates the  
22 Government thinks he is perjuring himself. I object, I think  
23 it necessarily follows.

24 THE COURT: Well I don't think it necessarily fol-  
25 lows. We will allow the witness to Answer the pending question.

26 (LAST QUESTION READ ALOUD BY THE REPORTER)

27 MR. WEINBERG: My only other objection, Your Honor,



1 would be you would recognize it is ambiguous in the context  
2 we are discussing.

3 THE COURT: I think it is understandable. Go  
4 ahead. We're talking now about July 18, 1975?

5 MISS JACOBSON: That's correct.

6 THE COURT: All right, proceed.

7 A. I don't know. I'm really nervous here and really  
8 mixed up and I really don't - I don't want to say any more,  
9 further.

10 THE COURT: Well, the Court will not, in view of  
11 the possibility of State prosecutions, if the State hasn't  
12 already done so the Court won't require you to answer any  
13 questions along this line.

14 MISS JACOBSON: All right, thank you, Your Honor.

15 Q. Mr. Roy, when you were talking with Agent Handoga before  
16 you testified in the Grand Jury, I believe you stated  
17 before that he seemed to know a lot about the facts  
18 of that crime that you had been charged with and that  
19 he was telling you things and stating things and seemed  
20 to be expecting you to agree, is that correct?

21 A. Uh huh.

22 Q. And things that he was stating to you, did you feel that he  
23 was mis-stating the facts that what Agent Handoga was  
24 saying, was not true?

25 MR. WEINBERG: I object, Your Honor. Once again  
26 I think the question can just be what happened July first,  
27 that wasn't incriminating but when it gets down to ... is the



1 conversations true, he gets into the same area, July 18th.

THE COURT: We think that you were in this area.

3 We'll allow this question on cross-examination.

4 (LAST QUESTION READ ALOUD BY THE REPORTER)

5 A. What he was saying was true.

6 Q. All right, so that, excuse me. There was no problem for  
7 you to agree with what Agent Handoga was saying, is  
8 that correct?

9 A. There was no problem, right, that's right.

10 Q. And so you never had any reason to tell AGent Handoga that  
11 he was wrong, is that correct?

12 A. He asked me things and some of the points I might  
13 have clarified a little bit but basically what he was  
14 saying was along the right lines.

15 Q. Now, you said that Agent Handoga was pressing you to  
16 identify another picture, do you remember that?

17 A. Yes.

18 Q. All right, did you in fact, make a further identification?

19 A. The only - the only pictures that I had anything to do  
20 with were the ones with my initials on it.

21 Q. All right, so I take it then that you did not identify any  
22 one else, is that correct?

23 A. Right.

24 Q. Even though you felt that Agent Handoga was pressing you  
25 to identify someone else, is that correct?

26 A. Correct.

27 Q. So that even though he was pressing you, you didn't recognize



1 anyone else so you didn't identify anyone else, is  
2 that correct?

3 A. Right.

4 Q. So that you were able to withstand Agent Handoga's pressure,  
5 is that correct?

6 A. It was withstand his pressure, I mean, he'd kept asking  
7 me about this other person and I just couldn't recognize,  
8 I couldn't identify any other person and he seemed to  
9 think that, you know, I should be able to or whatever,  
10 I just, I just didn't have the facts to do it.

11 THE COURT: I take it that you didn't make any  
12 second identification?

13 A. That's right. The only, the only things I identified,  
14 as I say, were the pictures with my initials on the side.

15 THE COURT: All right.

16 Q. And while you were looking at those pictures, Agent Handoga  
17 gave you plenty of time to study them, is that correct?

18 A. Uh huh.

19 Q. And did he hand you the pictures in a pile like this, or  
20 did he spread them out on a table in front of you, or,

21 A. He handed me, -

22 Q. He handed you the pile of pictures?

23 A. Right.

24 Q. And you were free to read through them?

25 A. (Nodded)

26 Q. And take your time and study all these pictures?

27 A. That's right.



MISS JACOBSON: May I have a minute, Your Honor?

THE COURT: Right.

MISS JACOBSON: I have no further questions.

MR. WEINBERG: Just a couple, Your Honor.

REDIRECT EXAMINATION BY MR. WEINBERG:

Q. Although you didn't see tape on the wheels, you are positive you saw the wheels of the tape recorder moving on July 18, 1975?

A. Yes.

Q. And you are positive you saw Agent Handoga pushing buttons?

A. Yes, right.

Q. Were you ever told any rights, constitutional rights, the silence to counsel et cetera, on July first 1976?

A. No.

Q. This was the only time you were ever informed of your rights, was the first day you were arrested?

A. Right.

Q. Although you didn't feel that Agent Handoga expected you to lie, did you feel that he expected you to at least guess as to which picture looked the most like the person that gave you the 130 pounds of marijuana?

A. Right.

Q. And in your own mind did Agent Handoga have more of a basis to believe you could select? Strike that. You put your initials on 2 different pictures, is that right?

A. On 2 different pictures?



1 Q. One was the small one you thought was funny?

2 A. Oh, yes.

3 Q. You never made a positive identification of that picture,  
4 did you?

5 A. No.

6 Q. And then there's the bigger picture that he singled out and  
7 showed to you, is that right?

8 A. Yes.

9 Q. You never positively identified that picture, as the pic-  
10 ture of the man that gave you the marijuana? Did you?

11 A. I said it looked familiar.

12 Q. Now, directing your attention to the other person who Agent  
13 Handoga was, in your mind, asking you to identify.  
14 Agent Handoga, - you knew that Agent Handoga felt that  
15 you had only seen the second person for a very short  
16 amount of time, is that correct?

17 A. (No response).

18 Q. Is that correct?

19 A. State that again, please?

20 Q. Between the 2 people he was trying to, - you felt he was  
21 trying to get you to identify, one the person that was  
22 discussed as Bob, or Big Foot and the other person who  
23 we discussed, Agent Handoga knew that you had more  
24 contact with the fellow known as Bob, than the second  
25 fellow, is that correct?

26 A. Right.

27 Q. Did you feel under more pressure to make some identification,

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or pick some picture out that looked familiar regarding the person known as Bob as opposed to the other fellow?

A. (No response)

Q. Do you understand that? Strike that that was poorly worded.

THE COURT: Why don't you ask a direct question rather than lead the witness in that fashion?

Q. Which of the 2 people did you feel under more pressure to select, the person known as Bob or the second person?

A. Well, once I initialed a couple of photographs, he kept asking me about identifying someone else. You know? Please look at the pictures again, you know, describe the other person, things of this nature. And -

Q. Was, - I'm sorry, go ahead.

A. He was putting an awful lot of pressure on me to make a further identification.

Q. Did he seem pleased after you said that the big picture looked familiar? Did Agent Handoga seem pleased?

A. Why, yes.

Q. Did you feel that your probation was less threatened after you identified at least one picture?

A. Yes, you know, I had cooperated.

Q. You felt the pressure was off you, so to speak?

A. Right.

Q. And did you feel at liberty to refuse to make a second identification?

A. I couldn't make another identification, regardless of any pressures.



MR. WEINBERG: No other questions.

A. Or lack of pressure.

RECROSS EXAMINATION BY MISS JACOBSON:

Q. You just discussed with Mr. Weinberg someone that you discussed with Agent Handoga known as Bob or Big Foot?

A. What's that again.

Q. You, when Mr. Weinberg was asking you questions, he stated that you discussed someone with Agent Handoga who is known as Bob or Big Foot?

A. Uh huh.

Q. And this is the person who supplied you with the marijuana, is that correct?

A. This Big Foot, yah.

Q. And you knew Big Foot, is that right?

MR. WEINBERG: Once again, Your Honor, I think, -

THE COURT: I think it is obvious. We'll sustain the objection.

MISS JACOBSON: All right, I have no further questions.

THE COURT: We'll take a brief recess at this time.  
(RECESSED FROM 3:00 P.M. UNTIL 3:19 P.M.)

MR. WEINBERG: May I proceed, Your Honor?

THE COURT: Yes.

MR. WEINBERG: I would call Mr. Perkins.

RICHARD WAYNE PERKINS, having been called as a witness by the defendant, was duly sworn by the Clerk and testified on his oath as follows:

DIRECT EXAMINATION BY MR. WEINBERG:



Q. What is your address, sir?

A. 406 Margaret Street, Herkman, New York.

Q. Are you here in response to a subpoena?

A. Yes, I am.

Q. You are represented by counsel?

A. Yes.

Q. And he is present, is that correct?

A. Yes, he is.

Q. And that's Mr. Shaughnessy?

A. Yes.

Q. Sir, you are the same Richard Perkins who was arrested on July 18th, 1975 in the Burlington area involved in Marijuana transactions, is that correct?

A. Yes.

Q. And subsequently you entered a plea of guilty, did you not, before Judge Coffrin?

A. Yes.

Q. And you were sentenced by Judge Coffrin in March of 1976?

A. Yes.

Q. And the sentence you received was a suspended sentence and probation under the Youth Offender's Act and the Youth Correction Act, is that correct?

A. Yes.

Q. And you are presently on probation under those various statutes?

A. Yes.

Q. Sir, between your arrest on July 18th, 1975 and the time of



1 your sentencing on March 29, 1976, were you interviewed  
2 by agents of the Drug Enforcement Administration?

3 A. Yes, I was.

4 Q. Were you interviewed specially by Agent Handoga?

5 A. Yes.

6 Q. How many occasions do you recall?

7 A. Two or three.

8 Q. Were you cooperative with Agent Handoga?

9 A. Yes, I was.

10 Q. Testified before the Grand Jury prior to your sentencing?

11 A. Yes.

12 Q. And your cooperation, at least in part, had to do with the  
13 transaction involving 180 pounds of marijuana which  
14 you were arrested for, is that correct?

15 A. Yes.

16 Q. Sir, on any occasion between the time of your arrest and  
17 the time when you were sentenced in March of '76, were  
18 you shown photographs by Agent Handoga?

19 A. Yes, the time when?

20 Q. The time when you were sentenced in March?

21 A. I don't understand the question.

22 Q. Between the time of your arrest back in July of '75, and  
23 the time you were sentenced before Judge Coffrin in  
24 Burlington, between those two, were you ever shown  
25 any photographs?

26 A. No.

27 Q. Were you ever shown photographs by Agent Handoga?



REMARKS - DIRECT - (WEINBERG)

A. Yes.

Q. When did that occur, to the best of your recollection?

A. About a month after the sentencing.

Q. Can I have a second, Your Honor?

THE COURT: Yes.

MR. WEINBERG: The Government and I can stipulate that the date was April 26, 1976.

THE COURT: April 26th?

MR. WEINBERG: Yes, Your Honor.

Q. Sir, prior to April 26, 1976, were you ever asked for a description of a man who gave you and Mr. Roy 180 pounds of marijuana?

A. Yes.

Q. And did you give Agent Handoga a description?

A. Yes, I did.

Q. Sir, prior to being shown the photographs on April 26, 1976 did you form any opinion as to whether or not Agent Handoga felt that at least one photograph, included in the set that you were shown, depicted the individual who he felt gave you the marijuana back in July of '75?

A. Like a few minutes before?

Q. At any time before you looked at the photographs?

A. I don't think so, no.

Q. Did you have, - what were your feelings as you were shown the photographs, what was your state of mind, so to speak?

A. Well, nervous, I'd say nervous and, well, just, I don't



1 know, I don't remember all about it.

2 Q. I show you sir, Defendant's Exhibits "A" through "P" and ask  
3 whether or not they accurately - they are the same  
4 photos that you were shown on April 26, 1976?

5 A. Some are. ONE, I think I recognize a couple of them,  
6 yes.

7 Q. Were there any photographs that you recall back in April  
8 are not included in this packet?

9 A. I don't remember a girl.

10 Q. You don't remember the presence in the packet of Defendant's  
11 Exhibit "P", is that correct?

12 A. Right and I don't remember the guy with the white shirt  
13 with the decoration on it. Most of them, you know, I  
14 can remember.

15 Q. What did Agent Handoga ask you as to Defendant's Exhibit  
16 "H", you don't recall, is that right?

17 A. No, I don't remember that one.

18 Q. What did Agent Handoga ask you to do with the photographs  
19 when he showed them to you?

20 A. He asked me to pick out the two that I remembered  
21 closest of the people that I saw that day.

22 Q. How many photos did you initial and select out from the  
23 group you were shown, sir?

24 A. 3 or 4, I think, thereabout.

25 Q. Can you recall the 3 or 4 pictures that you selected out?

26 A. I think it was these 3.

27 Q. Do you recall whether or not there is a fourth?



1 A. I'm not really sure.

2 Q. And that's the Defendant's Exhibits "A" "C" and "H"?

3 A. Uh huh.

4 Q. After you had selected out those three, what then did Agent  
5 Handoga ask you to do, sir?

6 A. I don't think much of anything.

7 Q. Did he ask you, can you positively identify these 3 people?

8 A. Positively, no. I couldn't. I didn't even, - this

9 looked familiar to me, they all looked familiar to  
10 people I had seen.

11 Q. When you, and you were asked to initial any of them?

12 A. Yes, I think 2, the 2 that were the closest.

13 Q. That's Defendant's Exhibit "A" and Defendant's Exhibit "O",  
14 is that correct?

15 A. Right.

16 Q. Now, were these photographs, Defendant's Exhibits "C"  
17 through "P" on mountings like this? Are they in identi-  
18 cal form to the way they were when you saw them?

19 A. I don't remember whether they were or not.

20 THE COURT: Which were the two that you initialed  
21 as being the most, the closest identity, the closest resemblance.

22 Q. "O" and "A". Now was there any other picture of this  
23 size that you saw in the group and I'm pointing to  
24 Defendant's Exhibit "A"?

25 A. Well there's, there was that other one I saw, the black  
26 haired guy.

27 Q. Defendant's Exhibit "B"?



1 A. Right, that was there, too.

2 Q. Was there any other photograph of the size of Defendant's  
3 Exhibits "A" through "P"?

4 A. I don't really remember, I don't think so, though.

5 Q. Can you estimate the dimensions of the other photographs,  
6 Defendant's Exhibits "C" through "P"?

7 A. 3 by 4.

8 Q. You'd estimated the dimensions of Defendant's Exhibits "A"  
9 through "P" - "A" and "B"?

10 A. 5 by 7.

11 Q. "A" and "B" looked different than the rest of them, is that  
12 correct?

13 A. Yes.

14 Q. Sir, when is the first time you ever heard the name,  
15 "MARCHAND"?

16 A. I really wouldn't be able to place a time on it.

17 Q. From whom did you first hear the name?

18 A. First time I ever heard the name? I think I saw it on  
19 a written down some place on a notebook or something  
20 like that I, it was the first time I ever saw the name.

21 Q. Before you saw the pictures, did any Government agent ever  
22 mention the name to you?

23 A. Yes, I think so, yes.

24 Q. Who was that?

25 A. It was Officer Handoga.

26 Q. And that was before you saw the pictures, right?

27 A. Yes.

Q. Did you know whether or not a photograph of this Mr. MARCHAND was, would be included in the pictures you saw?

A. Did I know it would be there?

Q. Yes.

A. No.

Q. Did Agent Handoga tell you that he believed Mr. MARCHAND was the person who sold you, who distributed the marijuana to you?

A. He believed? No, I don't think so.

Q. It's fair to say that prior to and before July 18th, 1975, you never knew the last name of the individual who distributed marijuana to you?

A. No, I didn't.

Q. And you never knew that individual's name as Bob Marchand, did you?

A. No.

Q. Now, sir, you were asked to draw a sketch were you not, at some time prior to seeing photographs?

A. Yes.

Q. You are a bit of an artist, sir?

A. Trying.

Q. May I have that marked, Your Honor?

THE COURT: Yes.

(DEFENDANT'S EXHIBIT "Q", SKETCH, MARKED FOR IDENTIFICATION)

Q. I show you Defendant's Exhibit "Q" and ask whether or not that is the sketch you made of the individual who



distributed marijuana to you?

A. Yes, that is.

Q. And by what name did you know him?

A. Big Foot or Foot.

Q. So you testified in the Grand Jury about this transaction and about Big Foot, prior to your being sentenced on March of 1976?

A. Yes.

Q. And prior to your being shown photographs, is that right?

A. Yes.

Q. May I have a moment, Your Honor?

THE COURT: Yes.

Q. Sir, when you were shown the photographs and asked to select certain photographs, did you feel that the photographic display was being conducted in a suggestive way?

A. I'm not too clear on how it was. Well, -

Q. Did you feel that you were being encouraged in any way to select the bigger of the photographs?

A. YOU mean point to it or something?

Q. Did you feel in any way that that was the photograph Agent Handoga wished for you to select?

A. No.

Q. But it's fair to say that you were unable from that photograph to make a definite identification of that individual depicted in Defendant's Exhibit "A" as the supplier of the marijuana, is that correct?

A. Yes, that's correct.



Q. And that's because you were only in his presence on two separate occasions and then for only short periods of time, sir?

A. That's correct.

Q. Did Agent Handoga tell you anything after you selected Defendant's Exhibits "A" and "O"?

A. Not too much, except that he was, I think more or less reminded me that I was supposed to testify in court.

Q. How did he remind you sir? What did he say to you?

A. I don't really remember his exact words or, -

Q. What's your best recollection?

A. He said, well, I was leaving and he said, "Okay," I really don't know how to put it in words. He said, okay now we're going to be giving you a call, or something, and you will testify in court.

Q. Now sir, you last saw this man you knew as Big Foot on July 18th, 1975, is that right?

A. Yes.

Q. And you last saw a picture of him, with the exception of today on April 26, 1976, is that correct?

A. I saw a picture?

Q. With the exception of what happened in court today, the last time you saw the photograph of the person you felt most looked like Big Foot?

A. Right.

Q. The one that you felt was familiar looking?

A. Right.



1 Q. Was on April 26, 1976, is that right?

2 A. That's when I saw all the pictures?

3 Q. Yes.

4 A. Yes.

5 Q. And that wasn't a positive identification, and he looked  
6 familiar, is that correct?

7 A. Correct.

8 Q. Now, if you were asked to make an in-court identification,  
9 would that identification be based in part, at least,  
10 on your recollection of seeing the photographs?

11 A. It might. Might bring back my memory of comparing  
12 the photographs, yes, I would be thinking that way.

13 Q. You were never asked to view a line-up, were you sir?

14 A. I'm not sure of what that is.

15 Q. You were never asked to view a series of individuals and  
16 see whether or not any of them looked familiar?

17 A. Right in person, no.

18 Q. Now sir, when you were shown the photographs by Agent  
19 Handoga, you immediately eliminated some of them as  
20 looking nothing like the individual who you recalled on  
21 these 2 prior occasions to be Big Foot, is that right?

22 A. I think we, - I don't really remember. I know I picked  
23 out a couple.

24 Q. You mean they -

25 A. I studied them for, you know, quite a while.

26 Q. Those 3, the first 3 looked closest to the people you  
27 recalled, is that right?

A. Right.

Q. And the others didn't look close?

A. Uh huh.

Q. You were interviewed on several occasions by Agent Handoga before being shown the photos?

A. Yes.

Q. You always on those occasions, indicated a cooperativeness with him?

A. Yes.

Q. And you never told him on any occasion, the name MARCHAND, because you never knew it, is that right?

A. Pardon?

Q. You never, in any way, indicated the name to him of MARCHAND, because you didn't know it, is that correct?

A. I, I think I might have, - I don't really remember.

Q. Now, -

A. I don't know what you're talking about.

Q. You have spoken on 2 occasions, have you not to the man named George Girard?

A. Yes.

Q. And he is an investigator?

A. Yes.

Q. He represented that he was representing my office, is that correct?

A. Right.

Q. And you told him the truth, did you not?

A. Uh huh.



1 Q. He didn't threaten you in any way?

2 A. No.

3 Q. He didn't promise you anything?

4 A. No.

5 Q. He conducted himself fairly and as a gentleman, did he not?

6 A. Right.

7 Q. He showed you 2 pictures on one occasion, did he not?

8 A. Yes.

9 Q. And asked you whether or not you could state whether or not  
10 the person depicted in the pictures was the source of  
11 marijuana that you were arrested with, is that right?

12 A. Right.

13 Q. And you stated you could not, is that correct?

14 A. I couldn't.

15 Q. You couldnot recognize the person depicted in those two  
16 pictures?

17 A. Yes, that is correct.

18 Q. Thank you, sir.

19 MR. WEINBERG: I have no other questions, sir.

20 CROSS EXAMINATION BY MISS JACOBSON:

21 Q. Mr. Perkins, how clear is your memory on the day that  
22 you looked at the photographs?

23 A. It's really vague. I don't really remember.

24 Q. All right, do you remember when you looked at them, if  
25 Agent Handoga handed you the pile of photographs or did  
26 he take them and lay them all out on a table or, do  
27 you remember the procedure at all?

A. I really am not sure. I remember, I think they were all laid out. I think they were all laid out and I started looking at them. I think I closed my eyes or something and opened them up and they were all there.

Q. Were you seated at a table?

A. Yes.

Q. And Agent Handoga put the photographs out on a table and spread them out in no particular order and then asked you to look at them?

A. Right.

Q. And then did he tell you to pick out a particular picture, or did he ask you to look over the pictures and pick out something that you recognized?

A. Yes, he asked me to look over the pictures and pick out the ones that closely resembled the people.

Q. And do you recall about how much time you spent looking at the pictures?

A. (No response)

Q. Would you say that it was a minute, five minutes, ten?

A. About 10 or 15 minutes.

Q. And during that time did Agent Handoga say anything to you?

A. He was talking to me.

Q. Did he say anything to you about the pictures, particularly, telling you to pick anything out or look carefully at any particular pictures?

A. No, I don't think so.

Q. Did he suggest to you in any way, that he expected you to



pick out any particular picture?

A. No, I don't think he did, no.

Q. Did he make any suggestions to you that if you failed to pick out a picture that you would be punished in any way?

A. No.

Q. Did you feel that he was trying to trap you into violating your probation?

A. I don't recall any of those feelings, no.

Q. Do you feel that he was trying to elicit a lie from you?

A. No.

Q. Did you feel that he was trying to be as fair as he could in allowing you to pick out the pictures that you recognized?

A. Yes, I guess he was, yes.

Q. All right now, Mr. Perkins, that was on April 26th of this year, 1976, I'd like to show you again, Defendant's Exhibit "Q", the sketch that you made of Big Foot, do you recall when you made that sketch?

A. No.

Q. Was it before you saw the photographs?

A. Yes.

Q. Was it before the time that you testified before the Grand Jury, do you remember that?

A. It was some time before that.

Q. And it was prior to your Grand Jury testimony?

A. right.

A.94



Q. Do you recall if it was the same summer that you were arrested? You were arrested July 13, 1975, was it in the month of that, or two months?

A. I couldn't say. I just really don't remember. I think it may be 2 or 3 months.

Q. Two or three months, but it was before your Grand Jury testimony?

A. Yes.

Q. And is this picture a fair representation, or do you feel or did you feel at the time you drew it that that was a fair representation of this person known as BIG FOOT?

A. Well, not really, because I didn't really, well, when I was drawing it, I didn't really feel that it was anything.

Q. Were you trying, when you made that drawing, to represent this person as well as you could?

A. Right.

MISS JACOBSON: I have no further questions.

REDIRECT EXAMINATION BY MR. WEINBERG:

Q. How many times did you testify in the Grand Jury, sir?

A. Once.

Q. Sir, it's fair to say that when you recall the pictures you were shown when you recall your sketch, that many of the pictures you were shown, looked nothing like the sketch at all, is that correct?

A. Correct.

Q. Perhaps the only picture to look anything like the sketch,



was the big picture, Defendant's Exhibit "A"?

A. Yes, the only, the only, yes, the only thing I recall about the whole picture, you know, the demonstration, was that all the, all the small pictures were on one side and the two big pictures were on the other. But that was, - I think I turned them. I think he, - it's coming a little clearer, I think they were all on the desk turned over, what, you know just a batch of them, I turned them all over and went to looking at them.

Q. And the two big pictures were on the end?

A. They were on this side and then there's a, the smaller ones were, -

Q. Were the smaller ones separated at all from the two big ones?

A. No, they are, they were all stuck right together.

Q. But the only one that looked anything like the sketch was Defendant's Exhibit "A"?

A. That was the only one.

Q. Thank you, sir.

RECROSS EXAMINATION BY MISS JACOBSON:

Q. But Mr. Perkins, the sketch was made very close in time to the day that you were arrested, isn't that correct?

A. Yes.

Q. Or much closer to the day you saw the photographs?

A. Yes, it was. The, - when I went for, before the Grand Jury was when I gave the sketch, you know, and I think I had done it hardly a week before that.

Q. Did you do that picture at home?

A. Right.

Q. And did anyone indicate to you that you should draw it, in any way, or were you doing it on your own?

A. Well, you know, everyone was, - telling me that, to do it and mail it.

Q. But was anyone telling you how to draw it or how to depict this person?

A. Oh, no.

Q. All right, thank you, no further questions.

REDIRECT EXAMINATION BY MR. WEINBERG:

Q. Now when you looked through the pictures, - strike that.

Had you seen the sketch any time after you did it?

A. No.

Q. When you looked through the pictures, were you at all thinking about the sketch?

A. I think it was really, - I really don't remember if it, t was in the back of my mind, or, -

Q. Would you say the sketch is a perfect, fair or poor representation of the person you remember as having been the source of the marijuana?

A. I honestly don't know. I really don't.

Q. Is it fair to say that you don't have a good memory?  
(SIMULTANEOUS VOICES)

A. I, - in my mind, when I was sketching it I just sat there for the longest time and didn't really know what to draw and that was just a - I just remember he was a great big blond haired guy and he just had big features. And



I just drew a big blond haired, you know, male features.

Q. You don't have a very good memory of this man, do you?

A. I don't think so, no.

Q. And you didn't have a terribly good memory of him at the time you made the sketch either, did you?

A. No, it took me a long time to draw it, I remember.

Q. No other questions.

MISS JACOBSON: I have nothing further, Your Honor.

MR. WEINBERG: It is my understanding that Defendant's "A" through "Q" are admitted as exhibits?

THE COURT: They haven't been offered.

MR. WEINBERG: I offer them.

THE COURT: Defendant's "A" through "Q", any objections?

MISS JACOBSON: No objections.

THE COURT: Defendant's "A" through "Q" is received. I take it the sketch wasn't displayed to you again?

A. Until now?

THE COURT: Until now?

A. (Nodded)

THE COURT: It wasn't available to you at the time you made, you looked at the photographs?

A. That's correct, this is the first time I have seen it.

THE COURT: Since you did it?

A. Right.

MR. WEINBERG: Thank you sir, I have no other questions.



MR. WEINBERG: I would call Agent Hanooga.

THEODORE HANOOGA, having been called as a witness by the Defendant, was duly sworn by the Clerk and testified on his oath as follows:

DIRECT EXAMINATION BY MR. WEINBERG:

Q. Sir, to the best of your recollection when did you first receive a description of the source of the marijuana either from Mr. Perkins or Mr. Roy?

A. Within four to six weeks after the initial arrest.

Q. When did you first gain any information that a man named ROBERT MARCHAND was the source of the marijuana?

A. Within the first approximately 3 to 5 weeks later, after the initial arrest of Mr. Perkins.

Q. Was that before or after you interviewed Mr. Perkins?

A. I think that is before.

Q. When did you first obtain a picture of Mr. MARCHAND?

A. It would be late '75 or early '76.

Q. Which picture, Defendant's Exhibit "A", the larger one, or Defendant's Exhibit "C", the smaller one, did you obtain in late 1975 or early 1976?

A. I'm not sure which one I received first, whether it was the large or the small one.

Q. When did you receive the latter of the 2 pictures?

A. Which one is that, sir?

Q. Well, if you don't recall which of the 2 you received first, when did you receive the second of the two photographs included in the display shown to Mr. Roy and Mr. Perkins?

A. I'm not quite sure. It would be the end of '75 or



sometime early '76, I'm not quite sure of the time.

Q. It's fair to say that both, you had both pictures of  
Mr. MARCHAND in your possession by February first, 1976?

A. I'm not quite sure. It may or may not have been.

Q. Where did you obtain Defendant's Exhibit "A" from sir?

A. I -

MISS JACOBSON: Your Honor, I object to this  
question. I don't see that that has anything to do with it.

MR. WEINBERG: I would represent that the line of  
questioning is short and will be made relevant.

THE COURT: Very well, we'll allow it.

A. It was received from RUSSELL DENNISON, the Chief of  
Police of COLRAIN, MASSACHUSETTS.

Q. And the Defendant's Exhibit "B"?

A. Likewise from Mr. Dennison.

Q. And did you know what these pictures were, graduation  
pictures, or something like that?

A. I have no idea.

Q. Did you, after having received Defendant's Exhibits "A" and  
"B", did you make any attempt to find other pictures  
of the same size as these 2 included in the photographic  
display?

A. I have no other photographs that size.

Q. Did you make any attempt to get other photos that size, sir?

A. From my own office. I didn't go outside my own office

Q. Did you ever determine when those photographs were taken,  
Defendant's Exhibits "A" and "B"?

A. No, I personally did not.

Q. Did anybody?

A. Not to my knowledge.

Q. Did you ask Chief Dennison for any photographs in particular?

A. No, sir.

Q. Did you ask him a photograph of Mr. MARCHAND?

A. No, I did not ask him for a photograph.

Q. He voluntarily sent the picture to you?

A. He called me and he told me/had photographs of MARCHAND and some other photographs and I asked him if he would send them up to me.

Q. Was he the source of both the two photographs of Mr. MARCHAND?

A. No, he was not.

Q. Who, - where did you get the other picture, Defendant's Exhibit "C" from?

A. If I may see it.

(Photograph handed to the witness)

A. Defendant's Exhibit "C" was received from Special Agent Wayne DREW of the Hartford District Office.

THE COURT: DREW, is that?

A. DREW is, sir. D-R-E-W.

MR. WEINBERG: May I have a second, Your HONor?

THE COURT: Yes.

Q. Prior to seeing the photograph did Mr. Perkins ever say the man who he received the marijuana from was named BOB



1 MARCHAND?

2 A. No.

3 Q. Did Mr. ROY ever say the person he received the marijuana  
4 from was named BOB MARCHAND?

5 A. No, he did not.

6 Q. After, - strike that. Was Mr. ROY telling the truth when  
7 he said that the Defendant's Exhibit "A" was not con-  
8 tained in the original photograph shown to him?

9 A. Again, -

10 Q. Defendant's Exhibit "A" is the larger picture of Mr.  
11 MARCHAND.

12 A. Yes, he's right.

13 Q. You took that picture out of your brief case after he had  
14 seen the other pictures, sir?

15 A. I took that one and another one, I'm not sure whether  
16 I took it out of the brief case, but I showed him both  
17 large photos.

18 Q. You showed the two of them together ;and not with any other  
19 group of photos, is that right?

20 A. After he was looking all through those photographs, I  
21 included those.

22 Q. You added Defendant's Exhibit "A" and one other large pic-  
23 ture to the group?

24 A. Yes, I did.

25 THE COURT: Are you talking now about ROY or  
26 PERKINS, or both?

27 A. Mr. ROY, I believe we're talking about.

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Q. Mr. Roy. Mr. Perkins had given you a description of the man who was the source of the 100 pounds of marijuana, is that right?

A. Yes, he did.

Q. He also drew a sketch for you, is that correct?

A. Yes, he did.

Q. What was the basis of your selection of the Defendant's Exhibits "C" through "P", sir? In other words, why did you include these pictures "C" through "P", in the photographic display you showed to Mr. Perkins and Mr. Roy?

A. These were the photographs that were available to me from those available at our office.

Q. Did you make any specific attempt to find the photographs which looked like the sketch?

A. No, I tried getting fair representations of the photos throughout the - (incoherent)

Q. So, did you sir, make any attempt to select photos from D.E.A. Vermont or any other D.E.A. branch of any city or other State government law enforcement agency which appeared like the man depicted in the sketch made by Mr. Perkins?

A. Yes, when I went through I picked out those people who I thought were in some way, similar.

Q. Did you go, would you go through the pictures again and show me which pictures you feel are similar to the sketch and which pictures were not selected because of



1 their similarity with the sketch?

2 A. Those are the photos.

3 Q. Defendant's Exhibits "K" "O" "D" "N" "I" "M" "F" "H" were  
4 selected with an eye towards the sketch made by Mr.  
5 Perkins in your possession at the time you created this  
6 display, is that right?

7 A. Yes, they were picked out.

8 Q. Sir, Mr. Perkins, when showed the photos selected several  
9 of the pictures?

10 A. Yes, he did.

11 Q. He selected out more than two, did he not?

12 A. He selected three.

13 Q. And you asked him to initial those that most closely re-  
14 sembled people he was familiar with?

15 A. Well, that's not quite correct.

16 Q. What did you ask him to do, sir?

17 A. I asked him to go through the photos and pick out those,  
18 people that he had looked, that looked anything familiar  
19 at that particular time. He divided the photos up, he  
20 put three over and I asked him if he could further  
21 identify those people and who he thought they were.  
22 Which he did.

23 Q. And what did he say, sir?

24 A. He identified ROBERT MARCHAND to me as the person he  
25 believed to be BIG FOOT. He looked at 2 other photos  
26 - he tentatively identified another one as the person  
27 being DANNY but he wasn't quite of that identification.

Q. Isn't it fair to say that he wasn't sure of the identification of Defendant's Exhibit "A"?

A. Which is?

Q. MARCHAND.

A. I thought he was positive at the time that it was sure.

Q. Did he say he was sure?

A. Yes he did, he told me he was sure it was MARCHAND.

Q. Sir, did you take notes during either of the photographic displays?

A. No, I did not.

Q. When was the next time you wrote your recollection into a report?

A. In reference to these photos, the identification?

Q. Yes, sir.

A. I don't recall. I don't believe I wrote any report right off referencing the photo identification.

Q. Did you write a report prior to the photographic display which indicated Mr. Perkins' description?

A. Yes, I did.

Q. Do you recall what that description was?

A. Off-hand, yes, he put him in about six foot tall, big structure, big features, his feature description was, large lips, large hands and in general a person who kind of presented an appearance of looking big.

Q. Now sir, once Mr. PERKINS identified the picture, of Mr. MARCHAND, why did you bring Mr. PERKINS back before the Grand Jury to testify to that identification?



1 A. That was not my function. I had passed on the informa-  
2 tion to the Assistant United States Attorney and I  
3 can't call anybody before the Grand Jury.

4 Q. Sir, how many years have you been a D.E.A. Agent?

5 A. Eleven years.

6 Q. You've conducted investigations, or identification proced-  
7 ures before?

8 A. Yes, I have.

9 Q. You've been instructed in the way to do that, have you not  
10 by your D.E.A. superiors?

11 A. Yes, I have.

12 Q. You are aware of the fact that line-ups are considered as a  
13 more reliable identification to a photographic display?

14 A. That is correct?

15 Q. Was there any reason you didn't ask for a line-up?

16 A. Yes, I didn't have the defendant, Mr. MARCHAND, avail-  
17 able for a line-up.

18 Q. Did you ever make any inquiries as to where Mr. MARCHAND  
19 was during the period from say April 26, 1976 to July  
20 first, 1976?

21 A. I generally knew his where abouts or where I believe he  
22 was living at the time.

23 Q. You knew he had a residence down in the COLRAIN area?

24 A. Yes, I did.

25 Q. Chief DENNISON had called from COLRAIN and had communicated  
26 that information to you, did he not?

27 A. Yes, he did.

Q. Did you ever go down and ask Mr. MARCHAND whether he wanted to participate in a line-up?

A. No.

Q. Did you ever ask the United States Attorney to subpoena him to a line-up?

A. No, I did not.

Q. Did you ever suggest to the United States Attorney that a line-up might be a more reliable way to determine whether or not Mr. Roy could identify Mr. MARCHAND than would a photographic display?

A. No, I didn't.

MR. WEINBERG: Thank you, Agent.

MISS JACOBSON: I have no questions, Your Honor.

MR. WEINBERG: That concludes, Your Honor, the defendant's evidence on Motion to Dismiss #2 and the Motion to Suppress Identification testimony.

THE COURT: Anything further?

MISS JACOBSON: Not on those issues, Your Honor. We do have the other Motion to Suppress the statements taken from the defendant when he was arrested. We could go ahead with that.

THE COURT: Yes.

MR. WEINBERG: Sir, the burden is on the Government.

THE COURT: Yes.

MR. WEINBERG: On this issue.

MISS JACOBSON: The Government realizes that and we are just stating that we are prepared to go ahead.



1 THE COURT: Go ahead.

2 MISS JACOBSON: Thank you, Your Honor. We would  
3 call Special Agent James H. Harris.

4 JAMES H. HARRIS, having been called as a witness by the Govern-  
ment, was duly sworn by the Clerk and testified on  
5 his oath as follows:

6 DIRECT EXAMINATION BY MISS JACOBSON:

7 Q. Agent HARRIS how are you employed?

8 A. I am a Special Agent with the Drug Enforcement Adminis-  
9 tration in MIAMI, FLORIDA.

10 Q. And how long have you worked for the D.E.A.?

11 A. Eight years.

12 Q. All right, were you on duty on August 24th, 1976?

13 A. Yes, I was.

14 Q. All right, would you tell us what your hours of duty were  
15 that day, if you remember?

16 A. Started at approximately 5:00 o'clock in the morning  
17 at the DADE COUNTY Public Safety Department in MIAMI  
18 BEACH, FLORIDA.

19 Q. Did you have occasion that day to execute a Federal arrest  
20 warrant?

21 A. Yes, I did in LAUDERDALE, FLORIDA.

22 Q. All right, can you tell us when that warrant was issued if  
23 you know?

24 A. I believe it was issued the day before, but I'm not  
25 exactly positive.

26 Q. All right, do you know if that warrant was issued resulting  
27 from an indictment that was returned by a Grand Jury?



A. Yes, it was a warrant as a result of an indictment.

Q. Do you know in whose name that warrant was issued?

A. Robert HIGGINS.

Q. All right and would you tell us what happened at the time that you executed the warrant?

A. We went to a Mr. HIGGINS apartment in LAUDERDALE, FLORIDA, MYSELF, TWO DADE COUNTY Public Safety detectives and another Special Agent from the Drug Enforcement Administration. We were joined by a LAUDERDALE Police Department officer, myself, Detective ADCOCK and a LAUDERDALE Police warrant officer went to the front door, Agent McGlassius (Phonetic) and SATLER, Detective SATLER, went to the rear door of the apartment. The LAUDERDALE Police OFFICER, --

THE COURT: How do you spell that? Lauderdale.

A. L-A-U-D-E-R-H-I-L-L.

THE COURT: LAUDERHILL?

A. Lauderdale.

THE COURT: Go ahead.

A. The officer knocked on the door. This was a uniformed officer, knocked on the door and Mr. HIGGINS opened the door. The officer asked him if he was Mr. HIGGINS. He stated no and said he was Mr. HULL, I believe was the name, H-U-L-L. Detective ADCOCK identified to me Mr. HULL as being Mr. HIGGINS, the one that we had the arrest warrant for and I placed Mr. HIGGINS under arrest.

Q. And what happened at that point, did you enter the



apartment?

A. Yes, I arrested him just inside the door of the apartment.

Q. All right and did you enter the apartment with the other law enforcement people with you?

A. Yes.

Q. And was there anyone else present in that apartment?

A. I was advised by Mr. HIGGINS that there was another person in the bedroom and I saw personally later identified, ROBERT MARCHAND coming from the bedroom on the, I believe it would be the southeast side of the apartment.

Q. And did you have any conversation with Mr. MARCHAND At that time?

A. No, I asked one of the officers to find out who he was and to make sure that he was not armed.

Q. And one of the officers went over to Mr. MARCHAND to find that out?

A. Yes.

Q. All right, were you notified at any time while you were in the apartment of Mr. MARCHAND's identity?

A. Yes, I was in Mr. HIGGINS' bedroom, it's a two-bedroom apartment and Mr. HIGGINS' bedroom was on the southwest side of the apartment and we were in there talking to Mr. HIGGINS. Detective ADCOCK came over and stated that she knew ROBERT MARCHAND and she showed me I believe it was a driver's license and she stated that Mr. MARCHAND was known to her and that she had reason

to believe he was a fugitive from the District Court of Vermont on a marijuana conspiracy indictment and that she had learned this from conversation with the Special Agent HANDOGA of the Burlington District Office of D.E.A.

Q. And what did you do after Detective ADCOCK informed you of that?

A. I placed a call to Special Agent HANDOGA in Burlington And advised him that we had personally identified ROBERT MARCHAND from the date of birth and other identifying information and was d advised that there was a warrant in fact issued for MARCHAND and that I believe he, Agent HANDOGA also gave me the criminal indictment number and the date the indictment was filed and other information regarding his identify.

Q. Do you recall what that information was?

A. I believe he just verified the date of birth and his height and weight and eye color and things like that and also he gave me the indictment number, the criminal indictment was 76-51 or something like that. I don't recall the exact number.

Q. And after he spoke with Agent HANDOGA, what did you do?

A. I went back in the other room and it would be like the dining room, near the kitchen where Mr. MARCHAND was presently standing and advised him that he was under arrest for violation of Federal narcotic laws and there was a warrant issued for him in VERMONT. I advised him



of his rights and I then searched him.

Q. And when you searched him, did you remove anything from his custody?

A. Yes, I took a small telephone address book and various papers from his wallet.

Q. And were all these objects taken from Mr. MARCHAND's person?

A. Yes,

Q. After you seized these objects, did you maintain them in your own custody?

A. Yes.

Q. For how long?

A. I believe it's possibly up to a week. I had, I sealed them in an evidence envelope and after conference with Agent HANDOGA I mailed them registered mail to Agent HANDOGA.

Q. Thank you, Agent Harris, I have no further questions.

CROSS EXAMINATION BY MR. WEINBERG:

Q. This arrest warrant that was Mr. HIGGINS, what was that for sir?

A. Conspiracy to import marijuana and sale and distribution of marijuana.

Q. How did you know HIGGINS was inside the apartment?

A. Knocked on the door and he opened the door.

Q. You went to that apartment for a specific reason, did you not?

A. Yes, to arrest Mr. HIGGINS.

Q. The apartment was not registered in Mr. HIGGINS' name is it?

A. It was registered in an alias as Mr. HULL.

Q. The name was under Mr. HULL?

A. I believe that's correct.

Q. Had you ever seen HIGGINS in the apartment before?

A. I had never been in the apartment before.

Q. Had you ever seen him go into the apartment complex before?

A. No.

Q. Did you receive any specific information that he would be present at the apartment that day?

A. Only from the detectives, State Department of the Safety Department who had told me that they had conducted previous surveillance and investigation in the vicinity of the apartment and believed that he would be present early in the morning.

Q. Did they give you any specific details regarding whether or not they conducted a surveillance that evening?

A. No.

Q. Had you ever heard Mr. HIGGINS go by the name of HULL before?

A. I had never - up to that morning, I never heard of Mr. HIGGINS.

Q. Did your cooperating agents ever tell you the basis for their knowing that Mr. HIGGINS and Mr. HULL were the same?

A. It was Detective ADCOCK, I believe, that I had the conversation with and I believe they determined from the investigation how, what means they used, I don't know.

Q. You don't know whether or not they interviewed the landlord or anything like that, do you?



1 A. No, I do know when he opened the door, he identified  
2 himself as Mr. HULL and we did have a picture of him  
3 and we knew he was HIGGINS.

4 Q. What time did you arrive?

5 A. We were there approximately I guess, around 7:00 a.m.  
6 and we waited for about a half hour, for the LAUDERHILL  
7 uniformed police to arrive.

8 Q. You went inside the apartment complex and into the hall  
9 outside Mr. Hull's apartment at 7:30 a.m., approximately?

10 A. About 7:30, that's approximate.

11 Q. You knocked on the door?

12 A. The police officer did.

13 Q. Did he say anything?

14 A. He advised him that he was of the Lauderhill police de-  
15 partment and that he would like to talk to Mr. Higgins.

16 Q. Was this while the door was closed, or open?

17 A. The door was closed.

18 Q. Before the door opened, he advised that he was a Lauderhill  
19 police officer?

20 A. Yes, sir, I believe Mr. Higgins, I think it was Mr.  
21 Higgins, said, "who is it?" And he also announced  
22 himself again and Mr. Higgins then opened the door and  
23 asked him what's the problem and we arrested him.

24 Q. You arrested Mr. Higgins right at the threshold of the  
25 door, is that correct?

26 A. Yes, just as we walked in.

27 Q. And did Mr. Higgins invite you in after that?

A. Yes.

Q. He invited you into the apartment?

A. Well we had a little problem, the fact that he was wearing nothing but a towel at the time and he didn't really want to be taken down town in that condition.

Q. Did he go into his bedroom?

A. Yes, he did.

Q. Which is the bedroom separate from that in which you noticed the second individual, is that correct?

A. Yes, it's separate.

Q. When you saw the second individual you didn't know who he was, did you?

A. I had no idea.

Q. Never seen him before in your life?

A. No.

Q. Nor had Detective ADKINS, is that correct?

A. Detective ADCOCK, I believe, had seen a photograph of Mr. MARCHAND somewhere in the past. I don't know when, and -

Q. It's fair to say you were the arresting officer, sir, is that correct?

A. In what sense?

Q. You made the decision to arrest Mr. MARCHAND?

A. Yes, I did.

Q. That decision was after you spoke to Special Agent HANDOGA in VERMONT, is that correct?

A. After I determined he was wanted, yes, sir.



1 Q. Right and you determined that after the phone call to  
2 Special Agent HANDOGA?

3 A. And from a conversation with Detective ADCOCK.

4 Q. But it wasn't until after you spoke with Special Agent  
5 HANDOGA that you arrested ROBERT MARCHAND for being a  
6 fugitive from an indictment?

7 A. I undertook upon myself to talk to one of our agents in  
8 VERMONT to determine the fact that there was a warrant  
9 issued.

10 Q. And then you arrested Mr. MARCHAND?

11 A. Correct.

12 Q. Not beforehand?

13 A. Correct.

14 Q. Did you and Mr. Marchand have any discussions prior to your  
15 placing him under arrest?

16 A. I don't believe I ever talked to him.

17 Q. You were with Mr. HIGGINS, were you not?

18 A. I was with Mr. HIGGINS.

19 Q. In, and Mr. HIGGINS was in the bedroom getting dressed?

20 A. Yes, he was getting dressed in there, yes.

21 Q. And Mr. MARCHAND you had first seen in another bedroom, is  
22 that right?

23 A. He was coming out of the bedroom and there was, I believe  
24 a hallway bathroom and the hall goes out into the kitchen.

25 Q. Now, while you were with Mr. HIGGINS, Detective ADCOCK, is  
26 that the right name?

27 A. Yes.

Q. Came to you with the wallet?

A. I believe she had a, just a driver's license.

Q. Driver's license? And that was Robert Marchand's driver's license?

A. Yes.

Q. And that's how she identified the individual who was with Mr. HIGGINS in the apartment that morning, is that correct?

A. I don't know if she did it completely on the driver's license or, well, she stated she had seen a picture of this person before and she recognized the name and the picture and whatever and she knew it was Robert MARCHAND, the one that Agent HANDOGA had referred to earlier.

Q. You were not present at the conversation, were you, between the, if there was any, between Detective ADCOCK and Mr. MARCHAND?

A. I wasn't present when she was talking to him.

Q. Do you don't know how Mr. MARCHAND was identified by Detective ADCOCK, do you?

A. I would assume from the driver's license that obviously had given the driver's license, or had been taken, one way or the other. I don't know which way. And was identical, was identified. That's the normal procedure to identify the persons any how.

Q. Then she came into you because you were the chief agent on the spot, you were the D.E.A. agent, is that right?

A. That's correct.



1 Q. And she gave you the information at her command and you  
2 verified it by calling up Special Agent HANDOGA, is  
3 that right?

4 A. That's basically correct.

5 Q. And then you arrested him, Mr. MARCHAND?

6 A. Correct.

7 Q. Before you arrested MARCHAND, strike that. There was no  
8 search warrant for the apartment, was there?

9 A. No.

10 Q. Mr. MARCHAND never made any statements to you after his  
11 arrest, did he?

12 A. The only statements he made, well, he asked me what it  
13 was about and I told him. I didn't know what it was  
14 about, other than it was an indictment in the District  
15 Court of Vermont. I didn't know anything about it. He  
16 asked me what was going to happen and I told him he was  
17 going to be taken down and he said, "fine" or whatever.  
18 He wanted to call a lawyer. He's allowed, he made  
19 numerous phone calls from Mr. HIGGINS' phone, after  
20 talking with Mr. HIGGINS about using the phone to, I  
21 believe, the lawyer.

22 Q. When you took Mr. MARCHAND's address book from him, that  
23 was after he made the phone call, wasn't it? The original  
24 phone call?

25 A. I believe I had already had the phone book and he asked  
26 me for the numbers in the phone book. In other words  
27 he needed the numbers, he had numbers of friends

or lawyers in the phone book and I told him I was going to hold on to the book and asked him which numbers he wanted and he wrote some numbers down on a piece of paper and he kept the piece of paper. I kept the book.

Q. Now sir, when you first received the phone book, you did not know whose phone numbers were in it, did you?

A. (No response)

Q. In other words, the little phone book was closed, was it not?

A. I would guess that is correct.

Q. Do you have that any place?

(DEFENDANT'S EXHIBIT "R", SMALL ADDRESS BOOK, MARKED FOR IDENTIFICATION)

Q. I now show you Defendant's Exhibit "R" for identification and ask you whether or not that is the address book seized from Mr. MARCHAND at the time of his arrest?

A. This is the book. My initials are on it and the date of August 24th, 1976. And I believe on every page where there is any handwriting at all.

Q. When you first took this address book from Mr. MARCHAND, it was like it appears now, is that correct?

A. (No response)

Q. In other words, it wasn't open, it was a closed book?

A. Closed.

Q. Closed book and you didn't know what numbers were, in particular, were inside the book, is that correct?

A. I didn't know what was in the book or between the pages.



1 A. (cont'd) One way or the other. I didn't -

2 Q. You didn't know it was Mr. MARCHAND except as told to you  
3 by Agent HANCOCK and Detective ADCOCK?

4 A. Correct.

5 Q. And when did you first start going through Defendant's  
6 Exhibit "R" to determine what the contents were?

7 A. I believe immediately after I took it from his rear  
8 pocket. I had his wallet and that. I searched the  
9 wallet and searched in between the pages and I was  
10 looking for other evidence to search the person's  
11 wallet and whatever.

12 Q. You determined it was just an address book with phone  
13 numbers and the names, right?

14 A. It was an address book, yes.

15 Q. But you didn't know the names in the address book?

16 A. It appeared to me that some of them were persons that  
17 I believed were involved in drug traffic. I recognized  
18 some names in it that I did recall.

19 Q. Well, do you recall any?

20 A. I believe on the first page, the name HARRIS.

21 Q. The name HARRIS?

22 A. Yes.

23 Q. which is your name?

24 A. Yes.

25 Q. As well as lots of other people?

26 A. Right, but I believe the other person in it was a  
27 STANLEY HARRIS who was a victim of a homicide in MIAMI,

a couple of years ago.

Q. You didn't know STANLEY HARRIS' name was in this book until you went through it, is that right?

A. No, I didn't know his name was in there.

Q. Now, you also, sir, - by the way sir, did you know where Mr. Marchand's wallet was during, at the time you arrested him?

A. At the time I arrested him, I believe it was in his rear pocket.

Q. Do you recall that specifically?

A. That's the best of my recollection as to where it came from.

Q. In fact, don't you recall something or don't you recall seeing the wallet on the coffee table in the dining room of that, Mr. Hull's apartment, prior to arresting Mr. MARCHAND?

A. No, I don't recall it.

(DEFENDANT'S EXHIBIT "S", BAG CONTAINING VARIOUS PAPERS, ET CETERA, MARKED FOR IDENTIFICATION)

Q. So you also seized from Mr. MARCHAND various papers, did you not?

A. That's correct.

Q. Were they inside Mr. Marchand's wallet?

A. That's my best recollection, yes.

Q. And that's Defendant's Exhibit "B" for identification?

A. Yes, sir.

Q. I would move the introduction of both "R" and "S", Your



Honor.

MISS JACOBSON: No objection, Your Honor.

THE COURT: Defendant's "R" and "S" are received.

MR. WEINBERG: This Your Honor is the subject matter of objects of the motion.

Q. Did you read through those papers, sir?

A. I glanced through them, yes, sir.

Q. Before you glanced through them you didn't know what writings were depicted on the papers, did you?

A. That's why I was looking through them.

Q. You were looking for evidence, is that right?

A. That's right.

Q. When you looked through both the address book and the contents of the wallet, is that correct?

A. I was looking for evidence that might be written on the reverse parts of the notes. Also looking for evidence that may be, that might conceal the drug nature between the papers. I was looking for evidence in general, yes.

Q. But you were reading the contents of both the address book and the papers at the time you were going through them after seizing them from MARCHAND?

A. I read a portion of them, yes, sir.

Q. And that was for the purpose to ascertain whether or not they contained any incriminating evidence?

A. Yes and also to gain an idea what is in there so that when I contacted Agent HANDOGA again and relate to him what was found during the course of the search and to



determine if any of this was of any evidence value in that case up there.

Q. But you could have gone through both the address book and the papers to see whether they were any contraband without reading them, is that correct?

A. I think it would be natural to read it as you looked.

Q. The answer still is, you could have looked for contraband without reading the contents of the papers in the address book, isn't that right?

A. I don't think I could have done that, no.

Q. You couldn't have leafed through the address book to see whether there was any contraband inside?

A. I don't think that, - it may be possible but in my profession I tend to look at everything somewhat, to see.

Q. You were looking for evidence at the same you were going through the book?

A. There could have been hand-written notes or whatever, about transactions of any sort or names of associates come in there, so I was looking at everything, sir, yes, sir.

Q. So you decided that you would not look for contraband and then look for evidence, sir, you were doing everything together, is that right?

A. Yes, basically.

Q. And that was an election made basically by yourself as an experienced agent?



1 A. That's how I did it. I don't know if that is the right  
2 way, as far as you're concerned.

3 Q. Before, the last question sir, before you were looking for  
4 or through the contents of a wallet, you, of course,  
5 have no idea what these papers depicted, what was  
6 written on them, is that correct?

7 A. No, I had no idea what was in the book.

8 Q. Thank you, sir. May I just have a moment, Your Honor?

9 THE COURT: Sure.

10 Q. After Mr. Higgins was arrested, you and Mr. Higgins went  
11 into the bedroom, is that right?

12 A. Yes.

13 Q. And you don't know what communications occurred between Mr.  
14 MARCHAND and Detective ADCOCK and the other agents out  
15 in the other room, do you? You weren't present.

16 A. Not directly, no.

17 Q. Thank you, sir.

18 MR. WEINBERG: That is all I have, Your Honor.

19 MISS JACOBSON: May Agent HARRIS return to Miami  
20 Your Honor?

21 MR. WEINBERG: I have no objections to his return-  
22 ing to Miami.

23 THE COURT: That's all, Mr. Harris.

24 MR. WEINBERG: It's my understanding that the  
25 Government has no other witnesses but I have one. I would call  
26 ROBERT MARCHAND. He'll be over in a minute, Your Honor.

27 THE COURT: We'll take a brief recess.



(RECESSED FROM 4:20 P.M. UNTIL 4:29 P.M.)

MR. WEINBERG: I would call Mr. MARCHAND and his testimony will pertain to surrounding his arrest on the morning of July 24th 1976.

THE COURT: Very well.

ROBERT P. MARCHAND, JR., having been called by the defendant to testify in his own behalf was duly sworn by the Clerk and testified on his oath as follows:

DIRECT EXAMINATION BY MR. WEINBERG:

Q. Your name, sir?

A. Robert P. Marchand, Junior.

Q. Now, directing your attention to the time of your arrest, the date of your arrest, August 24th, 1976, where were you at that occasion?

A. I was in an apartment in INVERRARY, Florida.

THE COURT: What was that? How do you spell that?

A. I think it's I-N-V-E-R-R-A-R-Y.

Q. What is your first recollection of that morning, sir?

A. Being woke up by a loud banging at the door, the front door of the apartment. I was in the bedroom asleep.

Q. How many bedrooms are in the apartment?

A. Two.

Q. You were sleeping in one?

A. Yes.

Q. Was there anyone else in the other?

A. Yes, sir.

Q. Who was that?

A. Mr. HIGGINS.

HERMAN J. VESPER  
OFFICIAL FEDERAL REPORTER  
P. O. Box 143  
RUTLAND, VERMONT 05701

A-125.



Q. What did you next hear, sir?

A. I think Mr. HIGGINS told me to come out of the bedroom or whatever and I could hear some conversation going on and I just heard, "Bob, come on out."

Q. Did you hear the conversation that occurred at the door, sir, when you were still in the bedroom?

A. The only thing I can really recall that I heard was the Federal agents, and that's all I heard.

Q. When you came out sir, what was your state of dress?

A. I just had a pair of pants on.

Q. What was the next thing that you remember?

A. I asked if I was under arrest and they said, I think Mr. SATLER, I'm not sure, -

Q. Mr. who, sir?

A. SATLER.

Q. SADLER?

A. SADLER. I addressed him and he said, "You're not under arrest." I said, "Oh, I'm leaving."

Q. Then what happened, sir?

A. I returned to the bedroom where I had been sleeping, put a shirt on and at that time I was ushered out, back to the main part of the apartment, to the dining room.

Q. Then what happened, sir?

A. I asked repeatedly if I was under arrest and told "no" and I said, "Well, I'm leaving."

Q. Who did you tell that to?

A. They said, "no." They pushed me into, well, the guided

A.126.



me into a chair and I tried to get up from the chair and was told to sit down again. I got up again and was told to sit down again or else they'd get physical or whatever and I just sat in the chair.

Q. And these agents instructing you were agents other than Mr. HARRIS who is sitting between the two people at the table?

A. Yes.

Q. Sir, the evening of that morning, where did you first see your wallet?

A. It was on the table in the dining room.

Q. And where did you first see your address book?

A. I got it out of my wallet at one point after I had been arrested and I walked over to the telephone.

Q. Was your driver's license in the wallet, sir?

A. Yes, it was.

Q. And your wallet was on the dining room table?

A. Yes, it was.

Q. And you were sitting in the living room?

A. No, I was sitting in the dining room.

Q. And where was Mr. HIGGINS at the time?

A. He was going between the dining room and the bedroom that he had been sleeping in.

Q. What's the next thing you recall occurring?

A. Well, after they wouldn't let me leave I kept repeating, asking if I was under arrest. They said, "no." At which point I heard someone say that there was an arrest



1 warrant for me and nobody really asked me any questions  
2 at all and I said, you know, if I am under arrest, I  
3 am entitled to a phone call and I proceeded to, for  
4 the first time, to look for my wallet and took my  
5 address book out and go to the phone.

6 Q. Did you take your wallet as well?

7 A. No, I just took the address book.

8 Q. So where was the wallet?

9 A. The wallet was, the whole time, was on the table in the  
10 dining room.

11 Q. What's the next thing you recall occurring?

12 A. Well, I walked to the telephone after I had been told  
13 I was arrested and proceeded to make a phone call and  
14 at which point Agent HARRIS grabbed the address book  
15 out of my hand.

16 Q. Did you see what happened to your wallet?

17 A. It was on the dining room table the whole time. They  
18 were spelling my name and everything in the other room,  
19 I could hear a conversation going on on the phone in  
20 the other room, which they were, this is before I  
21 went to talk with them. I was sitting in the dining  
22 room. And at which point I was not under arrest but  
23 they had, you know, my wallet was there the whole time  
24 and that sooner or later they knew, that's the only way  
25 that they knew who I was.

26 Q. After AGent HARRIS placed you under arrest and after your  
27 address book was seized from your hand and got to the

A. 128.

telephone, when did you next see your wallet?

A. They were - the agent and police and everything were going through it. In details that is.

MR. WEINBERG: One second, please.

Q. Sir, did you see anybody go into your wallet and take a driver's license out prior to your being arrested?

A. Well I was back from the time that I, the wallet was on the table, I went into the bedroom and at the time that they started to conduct, well, conduct a, whatever the telephone part of the - to call in to see who I was and to call you know, to find out if there were any outstanding warrants.

Q. So in other words, prior to your arrest, you were both in the dining room and later in the bedroom, is that correct?

A. Yes.

Q. And that was the bedroom other than the bedroom that Mr. HIGGINS was in?

A. Yes.

Q. And your statement is you didn't see anybody take the driver's license out of that wallet, is that correct?

A. (No response)

Q. All I want is your best recollection.

A. I can remember someone flipping with the wallet. The way I remember it the wallet was flipped open on the table at one point in time before - when I came back into the room when I put a short on and returned into



dining room I was told to sit down, forceably, and that's when I, - I hadn't even told them who I was.

So that's the only way they could have known who I was, was to they had gone into the wallet.

Q. Before you went back into your bedroom, - let's get the sequence right. You heard the knock on the door and HIGGINS asked you to come out and you came out into the dining room from your bedroom, is that right?

A. Yes.

Q. Then you had initial conversation and you learned you weren't under arrest and you went back into your bedroom?

A. Yes.

Q. At that point, what was the condition of the wallet? Was it closed, or open?

A. It was closed.

Q. You got dressed in the bedroom?

A. Yes.

Q. And then you came out again?

A. Yes.

Q. That was the time the conversations occurred as to whether you were under arrest and the answer was "no" but they wouldn't let me leave?

A. Yes.

Q. At that time did you notice the condition of your wallet?

A. I believe it was open. I can't say unequivocally but I believe it was open.

Q. Was this around the time that the phone calls were going on

A./30.



and people were spelling your name?

A. Yes.

Q. Then at some point you heard there was a warrant out for you and you were placed under arrest, is that right?

A. Yes.

Q. You were allowed to go to your wallet, is that right?

A. Yes.

Q. Take your address book out?

A. Right.

Q. You went to the phone?

A. right.

Q. At this point, all you know is that the wallet was on the dining room table and the address book was in your hand?

A. Right.

Q. And the address book was seized from your hand by Agent HARRIS, who was executing the arrest?

A. Yes.

Q. No other questions.

CROSS EXAMINATION BY MISS JACOBSON:

Q. Mr. MARCHAND, at the time the agents entered the apartment and did you know they were executing an arrest warrant?

A. No, I did not.

Q. Did anybody ever tell you that?

A. No, they did not. Nobody ever told me anything.

Q. Nobody told you anything?

A. I just asked if I was under arrest and I was told "no"



and I was, I tried to leave and they wouldn't let me.

Q. Well, let's go back a little bit because you didn't say it exactly that way before.

MR. WEINBERG: I object, Your Honor.

THE COURT: Yes, we'll, - (SIMULTANEOUS VOICES)

MISS JACOBSON: I'm sorry, Your Honor. I withdraw that.

Q. You said that you asked if you were under arrest and you were told, no, you were not under arrest, is that correct?

A. Yes.

Q. And at that point, you just stated, I believe, "I'm leaving," is that correct?

A. No, at that point I just said, or they just said that they were here for Mr. HIGGINS. Not for you.

Q. Right.

A. And at that point, I said, "I'm leaving."

Q. All right, at that point, when you said that, when you said, "I'm leaving," did you actually feel that you could go?

A. I was not - (SIMULTANEOUS VOICES)

Q. When you made that statement?

A. I was not under arrest, I went to the bedroom to put a shirt on, put some clothes on, in order to leave.

Q. Did anyone stop you from going back into the bedroom?

A. Yes, I returned to the bedroom to put a shirt on and at that point, I was ushered out of the bedroom again to the dining room and forced to sit down.

Q. Well, when you went into the bedroom, you went in freely,  
is that correct?

A. Yes, I did.

Q. All right and you put a shirt on?

A. I was followed. Yes.

Q. And someone accompanied you into the bedroom?

A. Yes.

Q. Do you know who that was?

A. I believe one of them was a uniformed officer.

Q. And is that who accompanied you into the bedroom?

A. I believe so, yes.

Q. And what did that officer do while you were putting your  
shirt on?

A. He was rummaging through the bedroom.

Q. Rummaging through the bedroom?

A. He was looking under the bed, well, trying to look  
under the bed, the sheets, anything that was open in  
the closet.

Q. And do you know if he found anything at that point while  
he was rummaging?

A. I believe there were a couple of radios of some sort  
on the floor and he noted those and said, "Oh, I'll bet  
they're stolen." He scooped them up in his arms and  
at the same time ushered me back out of the bedroom.

Q. And do you know if he found anything else while he was  
rummaging?

A. Not to my knowledge.



1 Q. Are you aware of the fact that 2 guns were found by the  
2 police?

3 MR. WEINBERG: I object, unless there is going to  
4 be evidence to that effect, Your Honor.

5 THE COURT: We'll allow the question.

6 A. No, I was not.

7 Q. Did that officer at any time while you were, while in the  
8 bedroom with you, ask you your name?

9 A. To my knowledge, no.

10 Q. Did he address any comments to you at all?

11 A. No.

12 Q. Did you feel that he was keeping an eye on you?

13 A. Definitely.

14 Q. All right and at that point, did he tell you to go back  
15 into the living room, or did you put your shirt on and  
16 go back into the living room?

17 A. I returned to the living room, at which point I was  
18 making set to leave the apartment and I was detained.

19 Q. So at that point when you returned to the living room then,  
20 you still felt that you were free to go?

21 A. I was being followed back to the bedroom and when I  
22 walked from the hallway, which is about 8 feet from the  
23 bedroom, I was detained before I could proceed any fur-  
24 ther.

25 Q. But you said as you came from the bedroom into the living  
26 room, you were getting ready to go?

27 A. Yes.



Q. So that you obviously felt that you could go?

A. Well I -

Q. At that point.

A. Well I was making an attempt to leave, yes.

Q. All right and you were told immediately to sit down or did you walk around the apartment a little or did you feel kind of restless while this was going on?

A. Not that I was very restless. I wanted to leave and they wouldn't let me. They told me to sit down, you cannot leave.

Q. And were you walking back and forth a little from the bedroom to the living room and from the living room to the bedroom?

A. I was trying to return back to the bedroom but they wouldn't let me.

Q. And there were quite a few people around, weren't there?

A. There <sup>were</sup> probably seven or so, I believe.

Q. And was it kind of crowded in the apartment there?

A. I wouldn't term it crowded, there were a number of people in the apartment but it wasn't crowded.

Q. And did it seem as though there was an confusion at all at that point? I mean were people walking from room to room and talking and trying to conduct whatever they were doing?

A. Oh, somewhat.

Q. At any point while you were still in the apartment, did any of the officers ask you for identification?



1 A. Not until after I was arrested, I don't believe.

2 Q. It's your testimony that no officer asked you your name  
3 before you were arrested?

4 A. Not that I can recall.

5 Q. So it might have happened but you can't recall?

6 A. No, I would say that I was asked, I asked repeatedly  
7 if I was under arrest. They said we are not here  
8 to bother you but here for Mr. HIGGINS. At that point  
9 I considered myself free to go and I tried to leave  
10 and nobody asked me anything until they detained me  
11 and then they proceeded to interrogate me.

12 Q. All right, is it possible, Mr. MARCHAND, that one of those  
13 officers, even though no one asked you your name, one  
14 of the officers recognized you from somewhere else?

15 MR. WEINBERG: I object, Your Honor, as to the  
16 possibilities, conjecture and things like that.

17 A. It might be an infinitesimal possibility but purely.  
18 No, I don't know anybody on the police force who would  
19 be able to recognize me.

20 Q. Well, did you hear Agent HARRIS when he was speaking on the  
21 phone with Agent HANDOGA? Did you hear him conduct a  
22 telephone conversation?

23 A. I could just hear a few words now and then.

24 Q. And did you know that a conversation was going on that he  
25 was referring to you?

26 A. I did not know specifically at that time.

27 Q. Did you hear your name mentioned?



1 A. I believe I did hear it mentioned at some point, but  
2 I'm not sure. It was when I was sitting in the living  
3 room I heard him say, "Yes, we have a warrant for him."

4 Q. And was it in fact after that conversation was over that  
5 you were arrested?

6 A. Yes.

7 Q. So that at the time you were arrested, Agent HARRIS did in  
8 fact know who you were?

9 A. Well, he was arresting me he knew who I was, yes.

10 Q. Well did he inform you then that there was an arrest warrant  
11 issued in VERMONT for your arrest?

12 A. Well could you back up and re-phrase your question as  
13 far as, you're trying to put a sequence in here and I  
14 do not follow you.

15 Q. Well, when he arrested you, at the time he arrested you,  
16 did he tell you that there was a warrant issued in your  
17 name from the State of VERMONT?

18 A. Yes, I believe he did.

19 Q. And did he advise you of your rights at that time?

20 A. I'm not sure, I think I went to make a phone call and  
21 there was a period in there in which he did advise me  
22 of my rights.

23 Q. And did anyone stop you from making the phone call?

24 A. No.

25 Q. And you did complete the phone call?

26 A. Yah, well, I completed a call, yes. As soon as I  
27 dialed the number he snaps the book from me and there



was no answer so that was that.

Q. But he didn't snatch the telephone from you?

A. No.

Q. And are you certain that he took the book away from you or, -

A. Yes, he grabbed the book from me.

Q. Didn't in fact, Mr. HARRIS give you some phone numbers from that book you had asked for so that you could make the telephone call?

A. My recollection is that he, I had the book in my hand and he snatched it from my hand as soon as I finished dialing.

Q. But he did let you complete the call?

A. Yes.

MISS JACOBSON: I have no further questions.

REDIRECT EXAMINATION BY MR. WEINBERG:

Q. You didn't possess any guns that night did you, sir?

A. No, I did not.

Q. You didn't see any guns being found, did you?

A. No, I did not.

Q. You had never been charged with any possession of guns have you, sir?

A. None, whatsoever.

Q. No other questions.

MR. WEINBERG: The Government and the Defense stipulate both the guns were found in Mr. HIGGINS' bedroom. That is all.



THE COURT: I didn't hear you.

MR. WEINBERG: I'm sorry, the Government and the defendant stipulate that the guns were found in Mr. Higgins', not Mr. Marchand's bedroom.

RECROSS EXAMINATION BY MISS JACOBSON:

Q. Mr. MARCHAND, between the time that you went back into the bedroom to put your shirt on and the time that you were told to sit down, in the living room, you were walking around the apartment a little bit, is that right?

A. No, I don't believe, I believe I walked back to the bedroom. I asked if I was under arrest. I was told "No, we're here for Mr. Higgins" and I returned back to the bedroom almost immediately.

Q. And when you returned back to the bedroom again, were you opening any drawers or trying to - (SIMULTANEOUS VOICES)

A. No, I closed me, - I took my shirt out, closed my suit case and was trying to leave.

Q. Isn't it a fact that you were looking in a few drawers and trying to find some things and Agent HARRIS told you that you, and that you continued looking through things while searching the apartment and to sit down?

A. No, that was not the sequence at all.

Q. You don't remember it that way?

A. That was, that was after I was arrested and before being handcuffed, before I was handcuffed, I was allowed to return back to the bedroom after I had been arrested, I



1 closed up everything that, you know, as far as I had a  
2 suit case and suit hanger. I closed those up and he  
3 said, you know, if you want to bring something with you  
4 at which point however he said if you open something up  
5 I'll have to take a look at it, at which point I just,  
6 I just closed them all up. I didn't take anything out,  
7 any further clothes or anything like that, I just took  
8 a tooth brush that was all and that was out in the  
9 bathroom.

10 Q. All right, thank you. I have no further questions, Your  
11 Honor.

12 MR. WEINBERG: I have no further questions. We  
13 would call Agent HANDOGA.

14 THEODORE HANDOGA, having been recalled as a witness by the  
15 defendant was duly warned that he was still under  
oath and further testified on his oath as follows:

16 DIRECT EXAMINATION BY MR. WEINBERG:

17 Q. Your name?

18 A. Theodore Handoga.

19 MISS JACOBSON: Your Honor, I don't see how Agent  
20 Handoga's testimony is relevant to the arrest of the defendant  
21 in Florida. He was not there.

22 THE COURT: Well, we'll allow it, we'll allow the  
23 defense to inquire and if they have something relevant to the  
24 issues the Court will hear it.

25 Q. Directing your attention to July 24th, 1976, August 24th,  
26 1976, did you have a conversation with Agent HARRIS of  
27 the D.E.A. in MIAMI?



A. I believe Agent DREW from the HARTFORD District Office sent a photo down to the DADE COUNTY Safety Department to Detective ADCOCK.

Q. And that's the photo that is depicted in Defendant's Exhibit "C" for identification?

A. (no response).

Q. The same photograph AGent DREW sent you?

A. Yes, sir.

MR. WEINBERG: I have no other questions of this witness.

MISS JACOBSON: I have no questions.

THE COURT: You are excused.

MR. WEINBERG: That is all, Your Honor.

THE COURT: Very well, the evidence is closed.

(5:00 p.m.) The Court will take the motion to suppress and the motion to dismiss as set forth in the motion, second motion, under consideration.

MR. WEINBERG: Your Honor, could you allow ten days perhaps for the filing of briefs?

A. Yes, if you feel you would like the time.

MR. WEINBERG: If I could have ten days.

THE COURT: Yes, whatever length of time is necessary. How about the Government?

MISS JACOBSON: Your Honor the Government would like at least a week to respond to those after they are filed.

MR. WEINBERG: If I could have ten days, Your Honor.



A. Yes, I did.

Q. Did you ever have any prior conversation that morning with any other law enforcement officer in Florida?

A. No, I did not.

Q. Did you ever, on any occasion, prior to August 24th, 1976, send a photograph of ROBERT MARCHAND to a Detective ADCOCK in MIAMI in the DADE COUNTY area?

A. I don't believe I sent a photograph to him, no.

Q. In fact you never had a photograph of MARCHAND until late in 1975 and early in 1976, did you?

A. That is late '75 or early '76?

Q. The only two photos you ever had of MARCHAND were the 2 that were in the photographic display? Defendant's Exhibits "A" and "C"?

A. The only ones I've had, yes.

Q. And you never sent either of those to Detective ADCOCK, did you?

A. I personally did not, no, sir.

Q. And you don't know of any other picture of MARCHAND the D.E.A. of Vermont had, do you?

A. In Vermont, no.

Q. And you don't know whether or not, with the exception of the booking photo on the arrest of MARCHAND on August 24th, whether or not any law enforcement agent in Florida had any picture, do you?

A. (No response)

Q. Of Mr. MARCHAND?



THE COURT: We'll allow the defendant ten days to file any memorandum, I mean, memoranda. Give the Government a week?

MISS JACOBSON: At this point I think that would be sufficient.

THE COURT: Well, that would be October 22nd for the Defendant and October 30th for the Government.

MR. WEINBERG: What is the date again for the defendant, your Honor?

THE COURT: The 22nd, of October.

MR. WEINBERG: Would it be possible, Your Honor, I just spoke to the stenographer who said a transcript will be available this Saturday which means I could have it on Monday, whether I could have until the 25th which is the following Monday, just over the weekend to perfect my brief and have it brought up here?

THE COURT: All right.

MR. WEINBERG: Thank you, very much.

THE COURT: We'll allow the Government to November second.

MISS JACOBSON: Thank you, Your Honor.

(This hearing closed at 5:02 p.m. and then was immediately thereupon re-opened)

THE COURT: The Court has one motion to, one motion for admission we'll take.

MR. WEINBERG: Just, Your Honor if you could, the Government offered the Grand Jury transcript in camera and I



1 wonder if Your Honor could make it a part of the record and  
2 review it as part of the evidence, Your Honor. I think it's  
3 pertinent.

4 MISS JACOBSON: Your Honor, I've heard no showing  
5 of a particularized need or of any illegal or incompetent evi-  
6 dence was offered before the Grand Jury and absent that, I see  
7 no need for inspection. We have no objection to Your Honor  
8 looking at it but I don't think the defense has made any show-  
9 ing at all.

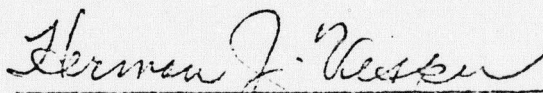
10 THE COURT: Well, I don't understand that the  
11 defendant is pressing they want to inspect it, they asked to  
12 have the Court read it in camera, I take it.

13 MR. WEINBERG: At this time, Your Honor.

14 THE COURT: Well we'll note your request and -  
15 (incoherent). I understand that it will be available.  
16 (THIS HEARING CLOSED AT 5:10 P.M.)

17 CERTIFICATE

18 I, Herman J. VESPER, Official Federal Court Reporter, hereby  
19 certify that the foregoing is a true and complete transcript  
20 of my verbatim stenographic notes of the hearing of THE UNITED  
21 STATES OF AMERICA vs ROBERT MARCHAND, Criminal Action #76-51-1  
22 which was heard before The Honorable JAMES S. HOLDEN, Chief,  
23 U.S. District Judge, at MONTPELIER, VERMONT, 12 October 1976  
24 on various motions as aforementioned on page 1, hereof.

25   
26 Official Court Reporter

27 Montpelier, Vermont

14 October 1976.

A.144.  
HERMAN J. VESPER  
OFFICIAL FEDERAL REPORTER  
P. O. Box 143  
RUTLAND, VERMONT 05701



*Filed November 30, 1976  
George J. Falcetta  
Deputy Clerk*

**COPY**

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

|                            |                 |
|----------------------------|-----------------|
| United States of America ) |                 |
| )                          | Criminal Action |
| v. )                       |                 |
| )                          | File No. 76-51  |
| Robert P. Marchand, Jr. )  |                 |

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The defendant, Robert P. Marchand, Jr., is charged with willfully and knowingly distributing and possessing with intent to distribute 180 pounds of marihuana, in violation of 21 U.S.C. § 841. The case is presently before the court on four defendant's motions: (1) to dismiss the indictment against him, (2) to suppress identification testimony, (3) to suppress evidence obtained at the time of his arrest on August 24, 1976, and (4) for the inspection of the minutes of grand jury proceedings.

An evidentiary hearing was conducted concerning the first three motions. Subsequent to the hearing of these motions the defendant renewed a prior motion for inspection of the minutes of all grand jury proceedings which had been previously denied. The renewed motion asserts that he is entitled to the minutes of the grand jury proceedings in order to establish his claim that the Government failed to present exculpatory information relating to the photographic identifications of him. He claims that inspection of the grand jury minutes is necessary in order to substantiate his belief that the proceedings were not conducted fairly and impartially.



Upon consideration of the testimony and arguments presented at the hearing and the memoranda filed by the parties, the court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Victor Roy, the first witness at the hearing, was arrested on July 18, 1975. He was subsequently charged in a federal indictment with distributing and conspiring to distribute marihuana. On the night of Roy's arrest he was taken to DEA headquarters in Williston, Vermont, where he was interviewed by Special Agent Theodore Handoga in the latter's office.

2. Roy testified that a tape recorder on Agent Handoga's desk was operating during the interview. He stated that he saw Handoga push buttons on the machine and saw the "wheels" turning. However, he was not certain that a recording was actually made.

3. Roy conceded that while the tape recorder was apparently operating he said nothing to Agent Handoga about the crime for which he had been arrested because his lawyer was not present. He subsequently pleaded guilty, sentence was suspended and Roy was placed on probation.

4. On July 1, 1976, at approximately 9:00 A.M., Roy appeared at the United States Attorney's office in Burlington in response to a grand jury subpoena. At about 10:00 A.M. he went to a small interview room, accompanied by Special Agent Handoga and Jerome F. O'Neill, Assistant United States

Attorney. Roy claimed that he was not informed of his rights prior to being questioned by Assistant U.S. Attorney O'Neill and Agent Handoga. It appears that Mr. O'Neill was present only for brief periods, and then only to ask Roy questions which he said he would ask before the grand jury. Roy stated that on this occasion there was a tape recorder in the interview room, but did not indicate whether it was operating. The court finds that no recording was made.

5. During his conversation with Agent Handoga, Roy informed the Agent that he had received the marihuana from someone named "Bob" or "Big Foot."

6. At approximately 10:45 A.M. Agent Handoga showed Roy a series of 14 photographs (Defendant's Exhibits C - P) and asked Roy to pick out the photograph or photographs of anyone he recognized. Roy was given ample time to review the photographs and he studied each and every one. He first selected a photograph of someone he thought to be Jim Hathaway of Burlington, Vermont. He selected this photograph on his first and second viewings of the photographs. After each selection he was told that the photograph he recognized was not of Jim Hathaway.

7. Upon viewing the photographs a third time, Roy set aside Defendant's Exhibit C, a photograph of the defendant, stating "this picture looks funny." With this, Agent Handoga produced a larger photograph of the defendant, Defendant's Exhibit A, and added "OK, here's a Bob, what about this one?" Roy responded that the larger photo "looks similar."



According to Roy's testimony, which was not disputed, Agent Handoga remarked "Ah, that's Marchand." He then called upon Roy to initial both photographs.

8. After Roy selected Exhibit A, Agent Handoga asked him to look for any other photographs of people he recognized. Roy selected the photograph of the only female in the group and told Agent Handoga that it looked like the girl who was with "Bob" at one time. Roy made no further identifications despite what he termed Agent Handoga's eagerness that he do so.

9. The court finds that Roy made no positive identification of the defendant. His remark that the person pictured in Defendant's Exhibit A looked similar to the photo C, which was originally displayed to Roy, came only after the suggestion of the agent that the larger photo A was a picture of "a Bob."

10. Richard Wayne Perkins, the second witness at the hearing, was arrested on July 18, 1975, for marihuana-related offenses. He was interviewed by Special Agent Handoga on two or three occasions between the time of his arrest and his sentencing on March 29, 1976. On one or more of those occasions he gave Agent Handoga a description of the man who gave 180 pounds of marihuana to him and Victor Roy.

11. Perkins met with Agent Handoga, and the latter on April 26, 1976, showed him Defendant's Exhibits A - P and asked him to pick out the photographs of two people he felt most closely resembled the people he saw at the time of the



marihuana transaction. Perkins selected three or four and at the hearing stated that he had picked Exhibit A (which was a photograph of the defendant) and Exhibits M and O. He was then asked to initial the two (Exhibits A and O) that bore the closest resemblance to people he saw on the date of the transaction.

12. A few months after his arrest, Perkins gave Handoga a description of the person who sold him the marihuana. Since Perkins has artistic ability, he was asked to make a drawing of the seller. The sketch was received in evidence (Defendant's Exhibit Q). Perkins gave the sketch to Handoga. Perkins did not see the sketch again until the hearing.

13. Perkins testified that he did not feel he was being encouraged or pressured by Agent Handoga to select the individual depicted in Exhibit A as the supplier of the marihuana. He conceded that he was not certain that the individual depicted was the supplier.

14. Special Agent James H. Harris of the DEA office in Miami, Florida, and the defendant testified as to the circumstances of the defendant's arrest in the Southern District of Florida on August 24, 1976. Pursuant to a federal arrest warrant issued for Robert Higgins on charges of sale and distribution of marihuana and conspiracy to import marihuana, Agent Harris went to Higgins's apartment in Lauderhill, Florida, accompanied by two Dade County Public Safety Detectives, Adcock and Sadler, and DEA Special Agent McGlassius. The apartment had been under surveillance. The



group was joined by a uniformed Lauderhill police officer outside the apartment.

15. At approximately 7:30 A.M. a uniformed officer knocked on the door of the Higgins apartment; Higgins opened the door. He gave his name as "Hull," but Detective Adcock recognized him as the Robert Higgins for whom the warrant was issued. Agent Harris placed him under arrest. The arrest was made just inside the door of the apartment.

16. Agent Harris and the other law enforcement personnel went further inside the apartment. They did not have a search warrant for the apartment. Higgins informed them that another person, later identified as the defendant, was in one of the bedrooms. As the defendant, who apparently had been asleep, emerged from the bedroom wearing just a pair of pants, Agent Harris asked one or more of the officers to find out who he was and to make sure he was not armed. After this was accomplished, the defendant was permitted to return to his bedroom to put on a shirt. The defendant was told that, although he was not under arrest, he could not leave the apartment. He was told to remain seated in a chair in the dining room.

17. While Agent Harris was talking to Higgins, Detective Adcock showed him the defendant's driver's license and stated that she knew Robert Marchand and had reason to believe that he was a fugitive from the District of Vermont on a marijuana conspiracy indictment. She had learned this from a prior telephone conversation with Special Agent Handoga of Vermont.



She also had seen a photograph of the defendant prior to the visit to the apartment.

18. Exactly how Detective Adcock obtained the defendant's driver's license was not resolved at the hearing. Special Agent Harris testified that he assumed she had been given the license or had taken it when he requested that the defendant be identified and searched for weapons. The defendant testified that his wallet was on the dining room <sup>near</sup> table. He was seated ~~at~~ the table until he left the room to dress. Detective Adcock recognized the defendant from having seen his photograph. She also recognized the defendant's name. She apparently obtained his name from his operator's license. The license was removed from the defendant's wallet and was presented to Agent Harris by Detective Adcock for identification. Nothing other than the driver's license was removed from the defendant's wallet until the time of his arrest and the search incident thereto.

19. Agent Harris verified the defendant's identity by calling Special Agent Handoga in Vermont. He then arrested the defendant and advised him of his rights. He also searched the defendant's person. Special Agent Harris removed the defendant's wallet from his rear pants pocket and obtained therefrom a small address book (Defendant's Exhibit R) and various papers and written notes (Defendant's Exhibit S).

20. Special Agent Harris searched through the address



book and wallet, looking for contraband or other evidence. In addition to looking for drug-related evidence between the pages of the book and among the papers found in the wallet, Agent Harris looked at some of the writing in the book and on the papers. When the defendant asked to make some telephone calls, Special Agent Harris supplied him the numbers from the address book and the defendant wrote them down on a separate piece of paper and made the calls.

21. The defendant was handcuffed and taken away by the law enforcement personnel. Approximately one week after the arrest, Special Agent Harris sent the address book and papers to Special Agent Handoga in a sealed evidence envelope.

#### CONCLUSIONS OF LAW

##### I. Motion to Dismiss Indictment

The defendant's motion to dismiss the indictment is premised upon four grounds: first, that the Government abused the subpoena power of the grand jury in order to interrogate Victor Roy; second, that the Government failed to preserve and make available to the defendant tape recordings of Special Agent Handoga's interviews with Victor Roy; third, that the identifications of the defendant by Victor Roy and Richard Perkins were fatally tainted by overly suggestive photographic identification procedures; and fourth, that exculpatory evidence of the suggestive nature of the identifications of the defendant was not furnished to the grand jury.

In support of his argument that the Government improperly used a grand jury subpoena for the purpose of conducting an interview of Roy, the defendant places heavy reliance upon



Durbin v. United States, 221 F.2d 520 (D.C. Cir. 1954), where it was held "[i]t was clearly an improper use of the District Court's process for the Assistant United States Attorney to issue a grand jury subpoena for the purpose of conducting his own inquisition." Id. at 522. The courts in this and other circuits are in general agreement with the holding in Durbin. The district court in In re Stolar, 397 F.Supp. 520, 522 (S.D.N.Y. 1975), relied on Durbin in holding that "the grand jury process may not be used by a federal prosecutor solely to conduct his own investigation." <sup>See</sup> United States v. Del Toro, 513 F.2d 656, 664 (2d Cir. 1975) (grand jury may not be used "for the sole purpose of preparing an already pending indictment for trial"); United States v. Kleen Laundry & Cleaners, Inc., 381 F.Supp. 519, 523 (E.D. N.Y. 1974). The Third Circuit has held that "[t]he court will not enforce a grand jury subpoena used only to compel a witness to appear in the United States Attorney's office." In re Grand Jury Proceedings (Schofield), 486 F.2d 85, 91 (3d Cir. 1973). The defendant also directs the court's attention to United States v. Thomas, 320 F.Supp. 527 (D.S.C. 1970), and United States v. Gurney, 393 F.Supp. 683 (M.D. Fla. 1974). In Thomas, the court held that it was an improper usurpation of judicial power for the United States Attorney to issue an official-looking document entitled "Summons" to notify the recipient to appear for an interview at the United States Attorney's office. In Gurney the court announced an end to its own practice of issuing writs of



habeas corpus ad testificandum to bring incarcerated federal prisoners to the United States Attorney's office for the sole purpose of interviewing prospective government witnesses for pre-trial discovery. 393 F.Supp. at 685.

The ~~cases~~ <sup>cases</sup> referred to ~~do~~ <sup>do</sup> not support the defendant's contention that the Government abused the grand jury's subpoena power in conducting the interview of Victor Roy prior to his grand jury appearance. In each of the cases relied upon by the defendant the purpose of the process issued was to assist the Federal prosecutor in the preparation of a case. None of the witnesses summoned in those cases appeared before the grand jury.

The present case presents different circumstances. Here, Victor Roy actually did appear before the grand jury on the date for which he was summoned. His interview with Assistant United States Attorney O'Neill and Special Agent Handoga was clearly relevant to the matters under investigation by the grand jury. The Assistant United States Attorney's questioning of Roy and Special Agent Handoga's conducting of the photographic identification do not constitute an abuse of the grand jury's subpoena power within the context of the cases relied upon by the defendant.

Victor Roy testified in support of the defendant's claim that a tape recording had been made of Special Agent Handoga's interview with Roy on July 18, 1975. As noted previously, Roy was not certain that a recording had been made. Even if a recording had been made, it is clear, by Roy's own concession, that he said nothing at all about the marihuana transaction



because his lawyer was not present. The court finds it unnecessary to determine whether a recording was made, since even if one had been made, it would have contained nothing relevant to the present case.

In light of the court's finding that no recording was made of Roy's July 1, 1976, interview with Special Agent Handoga, and that any recording that might have been made of the July 18, 1975, interview would be irrelevant to the present case, the court concludes that the defendant's claims, with respect to tape recordings, furnish no basis for dismissal of the indictment.

The third point raised by the defendant is that the photographic identification procedures used by Special Agent Handoga in his interviews with Victor Roy and Richard Perkins were unnecessarily suggestive and conducive to mistaken identification, thus resulting in a denial of due process. Questions concerning such identifications normally arise in the context of motions to suppress before trial, see, e.g., United States v. Harrison, 460 F.2d 270 (2d Cir.), cert. denied, 409 U.S. 862 (1972), or in the context of appeals or proceedings for post-conviction relief, see, e.g., United States v. Magnotti, 454 F.2d 1140 (2d Cir. 1972). The court is not aware of any case setting forth the standard to be applied where evidence of such identifications is presented to a grand jury. In the Second Circuit the test of admissibility at trial is whether the identifications resulted from "unnecessarily suggestive confrontation." Brathwaite v.



Manson, 527 F.2d 363, 368 (2d Cir. 1975), cert. granted, 425 U.S. \_\_\_, 44 U.S.L.W. 3624 (May 3, 1976).

It appears that a less rigorous test than that articulated in Brathwaite should be applied to identification evidence presented to a grand jury. Cf. United States v. Calandra, 414 U.S. 338, 344-45 (1974). Although such identification as Roy made was suggestive, the court concludes that its presentation to the grand jury did not constitute a denial of due process.

The first question is whether the use of photographs, rather than some other method of identification, was unnecessarily suggestive in and of itself. In United States ex rel. Pella v. Reid, 527 F.2d 380, 384 (2d Cir. 1975), the Second Circuit held that there was no impropriety in using photographic identification even where the suspect was available for a line-up. Clearly where, as here, the suspect was not in custody or otherwise available for a line-up, the use of photographic identification cannot be considered unnecessarily suggestive per se.

It is also clear that the lapse of time between the date on which Richard Perkins allegedly last saw the defendant and the date of the photographic identification is not in and of itself decisive. See United States v. Hurt, 476 F.2d 1164 (D.C. Cir. 1973) (lapse of approximately 1 year). Perkins apparently last saw the defendant approximately nine months before he was shown the display. In the interim he had drawn a good likeness of the defendant. In these circumstances a photographic display conducted after such an interval is not, of itself, impermissibly suggestive.



In attacking the Perkins identification, the defendant initially complains that the photographs in the display, with the exception of the two depicting the defendant, bore little resemblance to the sketch Perkins had made previously. The defendant asserts that "[a]lthough the sketch was of a clean-shaven individual with large features and short light-colored hair, most of the photographs in the array of approximately thirteen small and two large photographs depicted individuals with facial hair and/or long hair." The court disagrees with the defendant's characterization. The sketch is basically an outline drawing and reveals no attempt at skin or hair coloring. As for the hirsuteness of the individuals depicted in the photographs, only two photographs, Exhibits F and L, reveal full-fledged beards and mustaches; a third, Exhibit E, appears to show a mustache. One other photograph, Exhibit K, reveals a day or two's growth of whiskers. The individuals depicted in at least five photographs, Exhibits B, H, K, N and O, have relatively short hair. Finally, except for three color photographs, Exhibits E, G and K, it is virtually impossible to determine the hair coloring of the subjects depicted in the array.

The defendant also complains that the use of two photographs of him, including the large photograph, placed "double emphasis" on him and was unnecessarily suggestive. This argument is without merit. In United States v. Falarce, 426 F.2d 930 (2d Cir.), cert. denied, 400 U.S. 906 (1970), the defendants complained of a pre-trial photographic



identification in which three of the sixteen photographs shown to the witness were of the same defendant. Because the photographs were taken at different times and at different angles, and because the photographic identification was corroborated by other evidence the court found no constitutional infirmity in the procedure. 426 F.2d at 935.

The fact that the large photograph of the defendant was one of only two large photographs shown to Perkins, is similarly without consequence. Characteristics peculiar to a photograph of an individual, rather than to the individual depicted therein, do not render the use of that photograph unnecessarily suggestive. See United States v. Harrison, 460 F.2d 270, 271 (2d Cir.), cert. denied, 409 U.S. 862 (1972); United States v. Fernandez, 456 F.2d 638, 641 (2d Cir. 1972); United States v. Magnotti, 454 F.2d 1140, 1141 (2d Cir. 1972). Neither the Supreme Court nor the Second Circuit has adopted the dissenting view expressed by Justice Brennan in United States v. Ash, 413 U.S. 300, 333 (1973), that repetition of a particular subject's photograph, or a photograph which stands out from the rest for reasons other than the characteristics of its subject, is highly likely to render an identification display unnecessarily suggestive. The court concludes that the photographic identification of the defendant by Richard Perkins <sup>was</sup> ~~xxx~~ not unnecessarily suggestive.

The final point raised by the defendant on his motion to dismiss the indictment is that evidence of the suggestive



nature of the Roy and Perkins identifications should have been presented to the grand jury. He asserts that presentation of the fact of the identifications without also presenting the circumstances surrounding the identifications detracted from the fairness and impartiality of the grand jury proceedings. Recently the Supreme Court held that

the validity of an indictment is not affected by the character of the evidence considered. Thus, an indictment valid on its face is not subject to challenge on the ground that the grand jury acted on the basis of inadequate or incompetent evidence, . . . or even on the basis of information obtained in violation of a defendant's Fifth Amendment privilege against self-incrimination . . . .

United States v. Calandra, 414 U.S. 338, 344-45 (1974)

(citations omitted). In the absence of a claim of improper motivation or other improper conduct on the part of the Government or the grand jury itself, see, e.g., United States v. DeMarco, 401 F.Supp. 505, 512-13 (C.D. Cal. 1975), the defendant's challenge to the indictment must fail.

## II. Motion to Suppress Identification Testimony

As indicated in the above discussion of the defendant's motion to dismiss the indictment, the photographic identification of the defendant by Richard Perkins <sup>was</sup> ~~were~~ not the result of "unnecessarily suggestive confrontation."

Brathwaite v. Manson, 527 F.2d 363, 369 (2d Cir. 1975), cert. granted, 425 U.S. \_\_\_, 44 U.S.L.W. 3624 (May 3, 1976).

Accordingly, the motion to suppress Perkins's identification must fail. Since Roy's identification, such as it was, is infected by suggestion, the motion, as to this witness is



granted.

III. Motion to Suppress Evidence Obtained at Time of Arrest

The defendant contends that the law enforcement personnel who participated in his arrest on August 24, 1976, had probable cause to arrest him only after learning his identity, and that they established his identity as a result of an illegal search and seizure. The focus of the present inquiry is on whether evidence of the defendant's identity was obtained pursuant to constitutionally valid procedures. Since the court has found that detective Adcock, or one of the other officers, initially identified the defendant by removing his driver's license from his wallet, the particular question at issue is whether, under the circumstances as they existed at the time, this procedure constituted a reasonable search or seizure under the Fourth Amendment to the United States Constitution.

Clearly, under the teaching of Terry v. Ohio, 392 U.S. 1 (1968), and Adams v. Williams, 407 U.S. 143 (1972), Special Agent Harris was justified in directing that a limited protective search of the defendant be made. Law enforcement officers who enter a dwelling place in order to execute an arrest warrant are entitled to take reasonable steps to ensure their safety while they are performing their duty. Adams v. Williams, supra, at 145-46. The validity of the search, insofar as it was for the purpose of determining whether the defendant was armed, is beyond question. Terry v. Ohio, supra, at 23-24.



The problem of requesting and obtaining identification is one which has received less attention from the courts. The Supreme Court held in Terry that "a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest." Id. at 22. More recently, in Adams, the Court noted:

The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, Terry recognizes that it may be the essence of good police work to adopt an intermediate response . . . . A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time.

407 U.S. at 145-46.

In the instant case the procedures followed by the law enforcement personnel in determining the defendant's identity appear to fit within the framework of the type of "intermediate response" suggested by the Supreme Court in Adams. The officers were properly within the apartment pursuant to the arrest of Higgins. United States v. Rodriguez, 532 F.2d 834, 838 (2d Cir. 1976). Once they encountered the defendant in the apartment they were entitled to question him and to determine his identity. Id. at 838-39.

The defendant argues that his presence in the apartment with Higgins provided insufficient justification for his



detention and questioning. He relies upon Sibron v. New York, 392 U.S. 40 (1968). In Sibron, however, the defendant was stopped and searched after officers observed him talking to known narcotics addicts in a restaurant. Heroin was discovered on his person and the officers arrested him. The Supreme Court held that the heroin thus discovered was inadmissible in subsequent proceedings against Sibron because there had not been probable cause to arrest him at the moment the search was undertaken and the search could not be justified on protective grounds under Terry v. Ohio, 392 U.S. 1 (1968). The Court stated that "[t]he inference that persons who talk to narcotics addicts are engaged in the criminal traffic in narcotics is simply not the sort of reasonable inference required to support an intrusion by the police upon an individual's personal security." 392 U.S. at 62.

The facts of the present case, however, provide ample grounds to support the law enforcement officers' limited intrusion. Unlike Sibron, the defendant was not merely talking with known addicts in a public place; he was actually living with Robert Higgins, a suspected drug dealer, for whom the officers had an arrest warrant, in an apartment which was being kept under surveillance as a result of Higgins's drug-related activities. The law enforcement officers who came for the purpose of arresting Higgins were clearly justified in any suspicions they may have had that the defendant was more than a mere bystander who had no



connection at all with Higgins's activities. Under these circumstances, they were entitled to find out who he was and to detain him for questioning. United States v. Rodriguez, 532 F.2d 834, 838-39 (2d Cir. 1976); see United States v. Santana, 485 F.2d 365, 368 (2d Cir. 1973), cert. denied, 415 U.S. 931 (1974); cf. United States v. Tramunti, 513 F.2d 1087, 1100-04 (2d Cir.), cert. denied, 423 U.S. 832 (1975).

The Government's procurement of the defendant's operator's license is supportable on the strength of additional considerations. The total circumstances supplied reasonable grounds to justify the belief that the unidentified Marchand might be an accomplice of Higgins and might attempt to destroy the means of identification and any evidence that might be contained in the wallet. In these circumstances the team of officers, who arrested Higgins, properly took possession of the wallet on the table near where Marchand had been seated. See United States v. Manarite, 448 F.2d 583, 593 (2d Cir.), cert. denied, 404 U.S. 947 (1971).

Since the defendant apparently refused to cooperate by giving them his name, the officers were justified in removing his license from his wallet in order to identify him. This is the type of limited intrusion sanctioned by the language of Adams v. Williams, 407 U.S. 143, 145-46 (1972). Indicative of the restraint exercised by the officers in obtaining the identifying information from the defendant's wallet is the fact that nothing other than his license was sought nor removed from his wallet at the time of this initial contact. The address book and other papers were not discovered and removed until after the defendant was under arrest. Since the later, more thorough search of the defendant was pursuant to a valid arrest on probable cause, the address book



and other papers were legally obtained within the teaching of Chimel v. California, 395 U.S. 752 (1969).

Even if Special Agent Harris and the other law enforcement officers had not been justified in removing the defendant's operator's license from his wallet in order to identify him, the resulting identification would nevertheless be admissible. The defendant himself testified that after Robert Higgins was arrested at the door of the apartment he saw Higgins walk through the dining room on his way to his bedroom. Since the wallet was on the dining room table, it was subject to valid search and seizure for contraband or other evidence in connection with Higgins's arrest, under the teaching of Chimel v. California, <sup>supra</sup> ~~395 U.S. 752 (1969)~~. See United States v. Manarite, supra. Because the arrest of Higgins would provide ample justification for a search of the defendant's wallet, it is immaterial whether the search could be independently justified with respect to the defendant. See United States v. Griffin, 413 F.Supp. 178 (E.D. Mich. 1976). The defendant's motion to suppress must be denied.

#### IV. Motion for Inspection of Grand Jury Minutes

The defendant's motion, pursuant to Fed.R.Crim.P. 6(e), for inspection of the minutes of the grand jury's proceedings is unaccompanied by a memorandum in support as required by



Local Rule 9. The defendant's assertions of "particularized need" for inspection go to the quality and completeness of the information presented to the grand jury. As explained in the court's discussion of the defendant's motion to dismiss the indictment, an indictment which is valid on its face is not subject to attack on the ground that the grand jury acted on the basis of "inadequate or incompetent" evidence. See United States v. Calandra, 414 U.S. 338, 344-45 (1974).

At most, the defendant has alleged that some of the evidence presented to the grand jury may have been "inadequate or incompetent"; he has failed to make any showing of "particularized need." See Pittsburgh Plate Glass Co. v. United States, 360 U.S. 395, 400 (1959); United States v. Weinstein, 511 F.2d 622, 627 (2d Cir.), cert. denied, 422 U.S. 1042 (1975). The defendant's bare claim of need for the grand jury minutes does not outweigh the "long-established policy that maintains the secrecy of grand jury proceedings in the federal courts." United States v. Proctor & Gamble Co. 356 U.S. 677, 681 (1958). Thus, the defendant's renewed motion must fail.

It is ORDERED:

1. That the motion of the defendant to dismiss the indictment against him is denied;
2. That the motion of the defendant to suppress identification testimony of Victor Roy is granted; the motion to suppress the identification testimony of Richard Perkins is denied;



Filed December 8, 1976  
George S. Hoffmann  
Dy. Clerk

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

United States of America )  
v. ) Criminal Action  
Robert P. Marchand, Jr. ) File No. 76-51

ORDER

Paragraph 2 (at p. 20) of the Order of the court filed in this case on November 30, 1976, is amended to provide:

2. That the motion of the defendant to suppress identification testimony of Victor Roy is granted without prejudice to a further offer by the Government to establish at trial, out of the presence of the jury, that an adequate independent basis exists to support in-court identification of the defendant by the witness Roy; the motion to suppress the identification testimony of Richard Perkins is denied.

It is so ORDERED.

Dated at Rutland, in the District of Vermont, this  
8<sup>th</sup> day of December, 1976.

James S. Holden  
James S. Holden  
Chief Judge

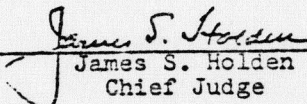


3. That the motion of the defendant to suppress evidence obtained at the time of his arrest is denied;

4. That the renewed motion of the defendant for inspection of the minutes of the grand jury proceedings is denied; and

5. That the case will be set for trial to commence Monday, December 20, 1976, at 9:30 A.M.

Dated at Rutland, in the District of Vermont, this 30th day of November, 1976.

  
James S. Holden  
Chief Judge



UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

UNITED STATES OF AMERICA )  
 )  
V. )  
 )  
ROBERT P. MARCHAND, JR. )  
 )

No. 76-51

MOTION TO DISMISS III

Now comes the defendant, Robert P. Marchand, Jr., who moves pursuant to the Fifth and Sixth Amendments to the United States Constitution that the above-captioned indictment be dismissed against him because of deficiencies in the Grand Jury proceedings. In support of this motion the defendant assigns the following grounds:

1. That the Grand Jury which indicted him heard no competent admissible evidence linking the defendant with the crime of possession of marijuana with intent to distribute and/or distributing marijuana;

2. That the only identification evidence linking the defendant with the crime was fatally tainted by improper and suggestive photographic identification procedures (as to the testimony of Victor Roy) or was fatally tainted by the exclusive presentation of hearsay evidence without any showing of the unavailability of the witness who could render direct testimony (as to the testimony of Richard Perkins);

3. That the Grand Jury was not advised that if they wished they could hear the testimony of Richard Perkins;



4. That the defendant's constitutionally guaranteed right to be charged by indictment by a Grand Jury which has access to primary witnesses and which exercises its obligation to evaluate the credibility of these witnesses was violated;

5. That the defendant's constitutionally guaranteed right to a fair and impartial Grand Jury was violated by the quality of the evidence introduced to the Grand Jury and by the absence of any competent evidence identifying the defendant as having committed the charged criminal acts.

By his attorneys,

\_\_\_\_\_  
Joseph S. Oteri

\_\_\_\_\_  
Martin G. Weinberg

\_\_\_\_\_  
Duncan Kilmartin

CERTIFICATE OF SERVICE

I, Martin G. Weinberg hereby certify that I have this day served a copy of the attached Motion to Dismiss III upon the United States by mailing a copy first class, postage prepaid, to Jill Jacobson, Assistant United States Attorney, U.S. Attorney's Office, P.O. Box 10, Rutland, Vermont 05701.

Dated at Boston, Massachusetts this 29th day of December, 1976.

\_\_\_\_\_  
Martin G. Weinberg



1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF VERMONT  
3

4 UNITED STATES

5 V

6 ROBERT MARCHAND  
7  
8  
9

10 Transcript of testimony of VICTOR ROY taken  
11 before the United States Grand Jury, Federal Building,  
12 Burlington, Vermont, on Thursday, July 1, 1976 at approximately  
13 1:16 P.M.  
14  
15

16 APPEARANCES:

17 JEROME F. O'NEILL, ESQ., Assistant United States Attorney,  
18 Federal Building, Burlington, Vermont, for the  
United States  
19  
20  
21  
22

23 DEPOSITIONS, ET CETERA  
Court and Deposition Reporters  
24 197 North Main Street  
Rutland, Vermont  
25 (802) 773-9323



Approximately 1:16 P.M.

VICTOR ROY,

being first duly sworn by the Foreman, was examined  
and testified as follows.

(DIRECT EXAMINATION)

BY MR. O'NEILL:

Q Could we have your name for the record, sir?

A Victor Roy.

Q Mr. Roy, could I ask you to talk nice and loud, if you  
would, for the Grand Jurors can hear you.

Where do you reside at the present time?

A Warren, Vermont.

Q Mr. Roy, you are the same Victor Roy who was charged on  
an indictment in the District with the distribution of,  
possession of with intention to distribute of approximately  
one hundred eighty pounds of marijuana on July 18, 1975,  
is that correct?

A Yes.

Q And you entered a plea of guilty to one of those counts and  
subsequently were sentenced by Judge Coffrin on March 8  
of this year, is that correct?

A Right.

Q Now, who was the individual whom you obtained the hundred  
eighty pounds from that you participated in the delivery  
of on July 18? How do you know him? How did you know him,

A. 171.



1 by what name?

2 A I knew him as "Big Foot" or Bob. I didn't know any last  
3 name.

4 Q When was it that you first met Big Foot or Bob?

5 A I met him, oh, years ago in the Amherst area, Amherst,  
6 Massachusetts.

7 Q And have you seen him continually thereafter or was there  
8 a point in time when you lost contact with him?

9 A Oh, I had lost contact with him. I hadn't seen him for  
10 a number of years and then had recently seen him down in  
11 the Brattleboro area, happened upon him.

12 Q What was the subject matter you discussed with him when  
13 you happened upon him down in the Brattleboro area?

14 A Well, we just talked, and he said something about, if you  
15 ever wanted to get any grass or anything that he was still,  
16 you know, doing things like this, and should the occasion  
17 ever arise to get in touch with him. It was kind of an  
18 off-the-cuff sort of thing.

19 Q Now, was there a point in time when you and an individual  
20 by the name of Richard Perkins did get in touch with this  
21 individual you knew as Bob?

22 A Yes.

23 Q How did you get in touch with him?

24 A He had given me a telephone number that I could use if I  
25 ever wanted to get in touch with him, called over the phone.



1 Q You called, were able to call him down there?

2 A I got, yes.

3 Q When you first met him on the first occasion down in  
4 Brattleboro, did he have a female associate or person  
5 with him?

6 A There was a girl with him, yes.

7 Q Do you recall what her name was or what part of the name  
8 you got?

9 A I think Ann.

10 Q Did you have occasion thereafter from time to time to call  
11 this telephone number that you have indicated you were  
12 given?

13 A A few times we did, yes.

14 Q In addition to speaking to an individual by the name of  
15 Bob did you speak with anyone else there that you knew  
16 by name?

17 A Well, a girl had talked on the phone and there was no  
18 name or anything, but it was a girl, and can't mistake  
19 the voice.

20 Q Did the voice sound similar to that of the person with  
21 whom you had heard speak on the first occasion when you  
22 met with Bob?

23 A It's hard to say over the phone, and when I had first met  
24 Bob it was a loud sort of a, what would you call it, a  
25 club, night club, and I didn't talk with the girl at all



1           then, so it's hard for me to say.

2   Q       Did you after first meeting with Bob down in Brattleboro,  
3           after you had run across him, did you have occasion along  
4           with Mr. Perkins to purchase a quantity of marijuana from  
5           him?

6   A       Yes, we did.

7   Q       Where did the transaction take place?

8   A       It transpired in Springfield, Vermont.

9   Q       Approximately how much was involved?

10   A       One of two times it was about ten pounds and another time  
11           it was about twenty, I believe.

12   Q       There was an occasion, was there not, when you purchased  
13           a hundred eighty pounds from him, is that right, or I  
14           should say, obtained a hundred eighty?

15   A       Obtained a hundred eighty pounds.

16   Q       Where did you obtain the hundred eighty pounds from him?

17   A       We went down to the Howard Johnson's in Brattleboro. It's  
18           just over the New Hampshire border. I don't know what  
19           route it is, Route 5, I think maybe, and we had met him  
20           there and he had it with him, and we just went around to  
21           a little rest area and he threw it in the trunk of our  
22           car.

23   Q       Was there someone else with him?

24   A       There was another person with him.

25   Q       Do you know what the name of the person was?



1 A No idea. I didn't even have a good look at him. I have  
2 no idea who he was or whatever.

3 Q And thereafter, you and Mr. Perkins brought the hundred  
4 eighty pounds up north and were arrested when you delivered  
5 to someone whom you later learned to be a DEA Agent, is  
6 that correct?

7 A That is correct.

8 Q Did Special Agent Mandoga of the Drug Enforcement  
9 Administration this morning show you a series of  
10 photographs and ask you if you recognized one of the  
11 individuals in that group?

12 A Yes, he did.

13 Q You picked out one of the photos, is that right?

14 A Right.

15 Q Did you also pick out another photo as being the person  
16 whom you believed to be the person by the name of, and  
17 who you met the first occasion with, Bob, in Brattleboro?

18 A Right. It looked, the photographs weren't, you know, they  
19 were all old photographs, but they looked the same.

20 Q They looked like basically the same persons, person, I  
21 should say?

22 A Um hum.

23 MR. O'NEILL: Would you step outside for a moment,  
24 Mr. Roy?

25 THE WITNESS: Sure.



(Witness excused at 1:22 P.M.)

STATE OF VERMONT

COUNTY OF RUTLAND, SS

I, SUSAN BLODGETT, Court Reporter and Notary Public, certify that the foregoing is a verbatim transcript of the stenographic notes taken by me of the proceedings before the Grand Jury at the United States Federal Building, Burlington, Vermont, on Thursday, July 1, 1976.

Dated at Rutland, Vermont, this 14<sup>th</sup> day of July, 1976.

\_\_\_\_\_  
Notary Public

My commission expires February 10, 1979.



1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF VERMONT  
3

4 UNITED STATES

5 V

6 ROBERT MARCHAND  
7  
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9

10 Transcript of testimony of THEODORE HANCOCK,  
11 taken before the United States Grand Jury, Federal Building,  
12 Burlington, Vermont, on Thursday, July 22, 1976, commencing at  
13 approximately 10:56 A.M.  
14  
15

16 APPEARANCE:

17 JILL A. JACOBSON, ESQ., Assistant United States Attorney,  
18 Federal Building, Rutland, Vermont, Attorney for the  
United States  
19  
20

21 DEPOSITIONS, ET CETERA  
22 197 North Main Street  
23 Rutland, Vermont  
24 (802) 773-9323  
25



2  
(Approximately 10:56 A.M.)  
22 Grand Jurors present

THEODORE HANDOGA,

being first duly sworn by the Foreman, was called  
and testified as follows:

(DIRECT EXAMINATION)

BY MRS. JACOBSON:

Q Mr. Handoga, what is your job?

A I am a Special Agent in charge of the Drug Enforcement  
Administration in Vermont.

Q How long have you worked at that job?

A I have been employed by the Administration for roughly  
ten years.

Q Can you give us a general description of your duties,  
please?

A I am charged with the entire enforcement of the drug  
laws on the field level in the State which encompasses  
both criminal prosecution and investigations and  
compliance activities.

Q All right. Now, I'd like to show you this transcript of  
testimony. Can you identify this as the testimony  
presented to the Grand Jury in Burlington on September  
13th, 1975?

A Yes. This is the testimony of Richard Perkins.

Q Now, we are going to read from this testimony. Mr. Handoga  
will read the part of Mr. Perkins to make it easier for

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Court and Deposition Reporters  
Manchester Center, Vermont 05255  
(802) 362-3984



1           you and I will ask him the questions. We will just read  
2           and you will see who Mr. Perkins is.

3           "Q Would you state your name?

4           A Richard Perkins.

5           Q And how old are you, Mr. Perkins?

6           A 22.

7           Q Where do you reside, sir?

8           A Now?

9           Q Yes.

10          A Herkimer, New York.

11          Q Is that where your family resides?

12          A Yes, it is.

13          Q You are presently residing with your family?

14          A Yes.

15          Q Was there a time when you lived in Vermont?

16          A Yes.

17          Q Where did you live when you lived here?

18          A I lived in Burlington and in Waitsfield."

19          Q Now, I think we are going to skip the next few pages.  
20           They involve advising Mr. Perkins of his rights, of what  
21           will happen to the testimony that he gives, and the fact  
22           that he is present before the Grand Jury voluntarily,  
23           so we are skipping to page 5 of the transcript, middle  
24           of the page.

25          "Q Now, directing your attention to July 13, 1975, was



1 that the day you were arrested?

2 A Yes, it was.

3 Q Would you please tell the Grand Jury the circumstances  
4 leading up to your arrest, what you did, who you  
5 were with and how you happened to be with that person  
6 and keep your voice up and talk to the last juror in  
7 the back of the room?

8 A Well, we were sitting around, Victor Roy and I,  
9 where we were living in the house. We hadn't been  
10 on a deal like that for a while and one of the  
11 persons, Stephen Gibeault, was calling the house all  
12 the while saying he had someone who snuck away with  
13 \$45,000.00 or \$50,000.00 and I could come down and  
14 he said he wanted a large quantity of anything.

15 Q When you say 'anything' are you referring to any  
16 kind of drugs or controlled substance?

17 A Yes, just about anything.

18 Q And the person who called you was Stephen Gibeault?

19 A Yes.

20 Q How long before July 18th did this telephone  
21 conversation take place?

22 A He called every day two or three days before and also  
23 Victor had a conversation with a pretty good friend  
24 of his. This guy said he was going to bring in a  
25 large quantity of grass and it was kind of coincidental.

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(802) 262-3984



1 Just two days before Stephen called and then Bob  
2 called and said he had more than I would ever walk around  
3 with which I think was probably about six ton of pot.

4 Q What was the name of Victor's friend?

5 A I found out his name was Bob Marchand. He said  
6 he got the information from a person called "Big  
7 Foot".

8 Q Do you know where the telephone call came from?

9 A Yes. It came from a place down near Brattleboro.

10 Q Was it a place in Vermont or in Massachusetts?

11 A It was in Vermont, almost to Massachusetts.

12 Q What happened to the negotiation?

13 A He called on the 'phone and said he had a real lot  
14 of it and right away I said I thought a guy in  
15 Burlington wanted \$50,000.00 worth. That is a real  
16 lot. Victor and I started setting the deal up so  
17 that we could go down. We didn't have very much money,  
18 only about \$1200.00 that Victor had. I didn't have any  
19 money. Victor had about \$1,200.00 but it was as much  
20 as we could get and show to him. Bob called that  
21 morning and we decided to meet him at Howard  
22 Johnson's in Brattleboro. We drove down there and  
23 met him and a guy who had to be the person involved  
24 with a lot of pot, that is, six ton of pot.  
25 I don't know who it was. This person's name was Dan.



1 Q And Dan accompanied Bob to Howard Johnson's parking  
2 lot near Brattleboro?

3 A Right.

4 Q Who said that they had six ton of pot?

5 A They didn't tell us how much they had. I just knew  
6 it was a lot.

7 Q What happened when you met him at Howard Johnson's  
8 parking lot?

9 A He said to follow us. We drove a ways and ended up  
10 on a dirt road with a little parking area. He had  
11 a great big T-Bird and we were standing there  
12 counting out \$1,200.00. Bob and Victor were friends  
13 for quite awhile. This guy who was the guy running  
14 the whole show was kind of an older guy and he  
15 expected us to have \$45,000.00 to take it with us.  
16 He loaded up the trunk of my car with the pot.

17 Q Did this fellow Dan ask to see your money before he  
18 loaded up the trunk?

19 A He loaded up the trunk and he said, 'let's see your  
20 money. He wanted a lot of it. He was really mad  
21 when he found out about the \$1,200.00, yelling  
22 and screaming. Bob said, give it to them. They can  
23 take it and bring back the rest of the money when they  
24 sell it tonight. I think they had enough so they  
25 didn't really want that in the car to move around



1 with. They went and talked to Victor and he said we  
2 would have it right back to them if we couldn't sell  
3 it that evening.

4 Q So they let you take a large quantity of marijuana  
5 more or less on consignment?

6 A Yes.

7 Q Did you give them \$1,200.00?

8 A No.

9 Q What did he do then?

10 A We opened up the trunk of my car. He said he wanted  
11 to do it real quick. I had been painting houses and  
12 I had tools and things in the trunk and he began  
13 throwing the stuff out of the trunk and putting the  
14 pot in the trunk and here I am sitting there with a  
15 real lot of pot, more than I had seen before.

16 Q Had you seen Big Foot or Dan before that day?

17 A I had met Big Foot before.

18 Q Was he a friend of yours?

19 A He was a good friend of Victor. I can't say  
20 anything about him. He was a good guy.

21 Q Isn't it unusual to front that much pot to someone  
22 he didn't know?

23 A He didn't know me. He knew Victor a long time since  
24 he was a kid.

25 Q Do you know where the transaction took place in the



1 Brattleboro area?

2 A There is a Howard Johnson's on the corner after you  
3 come off the Interstate and we took a right from  
4 there and a right down the road.

5 Q You took a right from Howard Johnson's and went  
6 under the railroad underpass?

7 A Yes.

8 Q After you went under the railroad underpass you  
9 took another right on a dirt road?

10 A Yes.

11 Q You didn't go across the river?

12 A No, because the river was right there.

13 Q Do you recall what the railroad underpass looks like?

14 A There is something like Cindy loves someone lettered  
15 on it.

16 Q Isn't there in big white letters "Mary loves someone"  
17 right on the underpass?

18 A Yes.

19 Q When you reached the parking area how long did this  
20 transaction take to transfer the pot?

21 A I was talking with Victor and Bob and this guy,  
22 Dan, who is a rough character you could tell right  
23 off yelling and screaming over there. He said to  
24 open up the trunk and when I did he threw all the  
25 stuff I had out. I guess he threw it in his car



2  
afterwards. He shoved all the pot out of his car and  
into the trunk of my car and asked where we were  
going. I said we have to go sell this. You could smell  
this stuff. Going sixty miles an hour you could  
smell the pot. Driving to Rutland I could smell it in  
the trunk. He had taken the spare tire out of the  
trunk of my car and I didn't have a tire if I got  
a flat tire. We drove into Brandon and I didn't know  
but I knew something was up. As I drove into  
Brandon the State Trooper was right here. I came  
back two weeks later to get all my stuff and I was  
told there was supposed to be a great big bust two  
weeks ago. Driving into Brandon they were waiting  
for us.

Q Did you ultimately make contact with someone to  
deliver the marijuana?

A I don't know what you mean.

Q On what date did you pick up the marijuana?

A It was the 18th.

Q We know that towards the end of the day you were  
arrested in South Burlington, is that correct?

A Right.

Q Did you stop anywhere on the way from Brattleboro  
to Burlington?

A We stopped in Brandon and checked the tires and met



1 a friend of mine hitchhiking. We talked to him a  
2 while and drove in to a place and got a bite to eat and  
3 got a beer in that place.

4 Q Did you telephone anyone on your way north?

5 A No.

6 Q How did you happen to end up at the Holiday Inn in  
7 South Burlington?

8 A We stopped in to the house in Weitsfield. There were  
9 a lot of people at the house. Some guy said Steve  
10 Gibeault had been calling and said I want to buy  
11 \$50,000.00 worth of dope. Everyone in the house  
12 knew the use of the word "dope".

13 Q Did there come a time when you and Steve Gibeault  
14 talked to someone else?

15 A He called me up and wanted to speak to me. I know  
16 him at UVM and St. Michaels.

17 Q Did you speak with Steve?

18 A Yes.

19 Q And would you tell us the substance of that conversation,  
20 please?

21 A Well, he said this old guy tucked away some place he  
22 has got all the money. He said he had known him and  
23 went to high school with him. He said he wasn't an  
24 old guy but a young guy he had known ever since  
25 high school. Well, he was a real good guy; and he



1 had a lot of money and he wants to buy some pot and  
2 said I got it. And he said, are you going to bring  
3 it down and meet me at Howard Johnson's parking lot  
4 at a certain time and we were going to drive my car and  
5 meet Steve at Howard Johnson's.

6 Q Who drove the car?

7 A Victor drove the car. I couldn't drive it. I was  
8 too nervous.

9 Q Had Victor talked to Steve at this time?

10 A No. He talked to me. He would say we would meet  
11 him some place and he would say I have \$50,000.00; I  
12 want to buy some pot and I would say I don't have  
13 that much.

14 Q Was this the first time that you and Victor sold pot  
15 to Steve?

16 A Yes. I had never sold anything to him.

17 Q Had you and Victor sold pot in small quantities to  
18 others?

19 A Yes.

20 Q Over a few months who was obtaining it from you?

21 A Little people around Burlington area.

22 Q Where did you obtain it?

23 A We would obtain it from Big Foot.

24 Q This was not the first time you obtained pot from  
25 Big Foot?



1 A No.

2 Q How would you obtain the pot before?

3 A We would get it off 89 at Brattleboro. I would  
4 let Victor take my car and go to get it.

5 Q Had Victor met Dan before?

6 A No.

7 Q When you arrived in the Burlington area approximately  
8 what time was it?

9 A Around 9:00.

10 Q You pulled into Howard Johnson's parking lot first?

11 A Yes.

12 Q And the meeting with Steve was for the Holiday Inn?

13 A Yes.

14 Q And the time was what?

15 A It was 9:30 or 9:15 at night, I am almost positive.

16 Q What happened when you got there?

17 A I didn't really know what to do too much. I took  
18 Victor's pad with prices and everything. I was  
19 supposed to go over everything. Steve didn't want  
20 to see anyone but me. Victor had been running the  
21 business end of it. I knew how to do it. As soon  
22 as I went over Steve came out with this guy. This  
23 guy came out who was the Federal Agent. He had a  
24 big bag of money. He had only \$7,000.00 there. I  
25 needed about \$60,000.00. We were sitting in his



1 Land Rover. He was looking at the pound he wanted to  
2 see. Right off he started talking about a large  
3 quantity and I said, why don't we go up the road some  
4 place. It was a perfect setup.

5 Q Where was Victor at this time?

6 A He was on the other side of the road.

7 Q Was he acting as lookout at that time?

8 A Kind of. He was seeing what was going on.

9 Q Did he keep his eye on the marijuana in Howard Johnson's  
10 parking lot?

11 A Yes. We didn't really know what he was doing.

12 Q Did there come a time when the agent arrested you?

13 A Yes.

14 Q Before that time do you know whether or not the  
15 agents had moved in on Victor?

16 A Yes, because I just had opened up the trunk of my  
17 car and I was going to start counting the money  
18 when I heard a whistle. Someone was beating up on  
19 Victor and I looked over the fence and there was a  
20 gun right in my eyes and that is about what happened.

21 Q And you froze?

22 A Yes, and I said, 'Oh, boy.'

23 Q You say you opened the trunk of your car. Did you  
24 have your car in the Holiday Inn parking lot?

25 A Yes.



- 1 Q And Victor stayed in the Howard Johnson parking lot?
- 2 A Yes. I think he already knew they had us. There
- 3 were about thirty police walking their dogs.
- 4 Q Why did Victor stay over in the Howard Johnson
- 5 parking lot?
- 6 A He said not to bring anyone over.
- 7 Q Who said that?
- 8 A George said that.
- 9 Q And when you say George you are talking about
- 10 George Bertram?
- 11 A Yes.
- 12 Q And he said don't bring Victor over?
- 13 A Yes. He didn't want to meet him.
- 14 Q Why was it you decided that you make contact at the
- 15 Holiday Inn parking lot?
- 16 A Because Steve said he wanted to meet me, not Victor.
- 17 Q Since you were arrested have you seen Big Foot or Dan?
- 18 A No.
- 19 Q Have you heard from them?
- 20 A No.
- 21 Q Have you made an effort to talk to them?
- 22 A No.
- 23 Q Have they been in contact with you to get the money?
- 24 A They don't want to see me and I don't want to see
- 25 them.



1 Q Do they still have the things that were removed from  
2 the trunk of your car?

3 A Yes, they do.

4 Q Do you still drive your car with no spare tire?

5 A No. I am riding my bicycle and running a lot.

6 Q If you saw his photograph could you identify Big Foot?

7 A Yes, I could. I don't know that I want to; I would  
8 though.

9 Q I take it you would tell the truth?

10 A Yes.

11 Q With respect to Dan, would you be able to identify  
12 Dan if you saw his photograph?

13 A Yes, I would."

14 Q And that is the end of the Grand Jury testimony of  
15 Richard Perkins on September 18th, 1975. Now, Agent  
16 Handoga, I bring your attention back to July 18, 1975.  
17 Were you involved in surveillance in anticipation of  
18 that drug sale?

19 A Yes, I was.

20 Q Where were you?

21 A On July 18th I was the Agent in charge of the investigation  
22 that was being conducted at that time. Arrangements had  
23 been made by George Bertram who was acting in an under-  
24 cover capacity to receive approximately one hundred  
25 eighty pounds of marijuana from an individual that we had



1 identified as Richard Perkins. The arrangements had been  
2 made for Richard Perkins to make delivery of the  
3 marijuana at the Holiday Inn parking lot at South  
4 Burlington. At approximately 8:00 surveillance was  
5 set up in the area of the Holiday Inn. George Bertram  
6 was acting in an undercover capacity and he was in the  
7 Holiday Inn parking lot. Just prior to 9:00 p.m. we  
8 received a radio transmission from one of the State  
9 Troopers who was down the road that the subject vehicle  
10 had passed his location. Shortly thereafter, the  
11 vehicle that Richard Perkins was driving along with  
12 another individual pulled into the Howard Johnson's  
13 Restaurant area and parked. Individual later identified  
14 as Richard Perkins exited the vehicle, went over to the  
15 Holiday Inn parking lot where he met with Agent Bertram  
16 and they engaged in a conversation. Short time thereafter,  
17 Perkins returned to the Howard Johnson's parking lot,  
18 entered his vehicle and drove it over to the Holiday  
19 Inn parking lot and parked next to Agent Bertram's  
20 vehicle. At this time, another individual who was in  
21 the car who was subsequently identified as Victor Roy had  
22 exited the vehicle and was standing on the edge of the  
23 parking lot and near Howard Johnson's Restaurant and  
24 observing Richard Perkins. On a pre-arranged signal,  
25 myself and several other officers moved in on Victor Roy,



1 placed him under arrest. When I identified myself to  
2 him as a police officer and told him to stand still he  
3 then let out a whistle to warn Richard Perkins, who was  
4 in the lot. At that time we brought him under control  
5 and placed him under arrest. At about the same time  
6 Agent Bertram and other officers arrested Victor Roy  
7 and Richard Perkins in the Holiday Inn parking lot,  
8 seized at that time approximately one hundred eighty  
9 pounds of high grade Columbia marijuana.

10 Q Agent Handoga, you say that the object seized was  
11 marijuana. Were any lab tests actually performed on the  
12 drugs that were seized?

13 A Yes. The marijuana was taken into custody by Agent  
14 Bertram. Representative samples from the four bales  
15 were taken and these were sent down the Northeast  
16 Regional Laboratories of the Drug Enforcement Administration.  
17 They performed analysis on this material and this has  
18 come back to be positive identification of marijuana.

19 Q Now, subsequent to the arrest of Mr. Perkins and Mr. Roy,  
20 did there come a time when you had conversations with  
21 both of these defendants?

22 A Yes, I did.

23 Q All right. Would you tell us the substance of your  
24 conversation first with Richard Perkins?

25 A Richard Perkins in the company of his lawyer was



1 interviewed by myself at my office in Williston, Vermont.  
2 At that time, he revealed the entire transactions  
3 between himself, Victor Roy and another individual who  
4 he identified as Big Foot, and another unidentified  
5 individual known as Dan. Richard Perkins said that on  
6 two prior occasions to his arrest he had dealings, he and  
7 Victor Roy had dealings with Robert Marchand who he knew  
8 as Big Foot and they had purchased approximately twenty  
9 pounds of marijuana from him. On the day of the arrest  
10 he told me Victor Roy had a friend they had called down  
11 and there was a large quantity of marijuana available.  
12 They traveled to Brattleboro, Vermont, where they met an  
13 individual known as Big Foot and another individual he  
14 identified as Dan. They there secured a hundred eighty  
15 pounds of marijuana which they subsequently brought up  
16 to South Burlington and delivered to Agent Bertram at  
17 which time they were arrested.  
18 Q And Mr. Perkins told you that Big Foot was the nickname  
19 for Robert Marchand?  
20 A He knew the individual as Big Foot and he subsequently  
21 to telling me that he had learned from a source I do not  
22 know that it was Robert Marchand.  
23 Q Did you ever show Mr. Perkins a spread of photographs  
24 including one of Mr. Marchand?  
25 A Yes. I showed Mr. Perkins a spread of approximately



1 twelve to thirteen photographs. He looked at the  
2 photographs and he identified Robert Marchand as the  
3 person that he knew as Big Foot.

4 Q All right. Now, would you please relate the substance  
5 of any conversations you had with Victor Roy about this  
6 transaction?

7 A I interviewed Victor Roy approximately three weeks ago.  
8 At that time, Victor Roy related his part in the  
9 investigation. He stated that he had met this person  
10 Big Foot who he also knew as Bob, and he claimed he  
11 did not know his last name, while he was in school over  
12 in Massachusetts approximately a year and a half ago.  
13 He again met him in Brattleboro, Vermont, at which time  
14 Bob told him that he had all kinds of drugs available.  
15 If he ever needed any he could call him and he gave him  
16 a telephone number at that time. An opportunity came  
17 up for Richard Perkins and Victor Roy to sell some  
18 marijuana. Victor Roy contacted Bob at a telephone  
19 number in the Southeastern part of Vermont and subsequently  
20 made arrangements for the delivery of marijuana.

21 Q Did Victor Roy ever identify a picture of Mr. Marchand?  
22 Did he pick it out from a photographic spread?

23 A He was shown a spread of approximately twelve photographs,  
24 and he picked out a photograph of Robert Marchand and  
25 the person he knows as Bob and also Big Foot.



1 Q Now, Agent Handoga, have you ever had occasion to investi-  
2 gate telephone records involving the telephone number  
3 of Mr. Marchand?

4 A Yes, I have.

5 Q Would you tell us the result of that investigation?

6 A After the arrest of Richard Perkins and Victor Roy I  
7 subpoenaed the telephone information on their telephone  
8 number which was located in Waitsfield-Warren area.

9 On analysis of those telephone calls show there was  
10 several 'phone calls to a number in South Halifax, Vermont,  
11 which was in the approximate area where Richard Perkins  
12 said that the fellow named Big Foot lived. Further  
13 investigation revealed that the telephone numbers that  
14 were being called in the South Halifax area came back to  
15 one Robert Marchand. Additional listing at that  
16 particular residence was to Ann Curtis. During an  
17 interview with Victor Roy, Victor Roy stated that on  
18 occasion he had called this particular number. Can I  
19 just back for a second? He had called a number given to  
20 him by Marchand and he had reached a person by the name  
21 of Annie there. Ann Curtis was one of the people that  
22 were living at that particular residence.

23 Q Do you have the dates that any of these telephone calls  
24 were made?

25 A I do but I don't have them present with me now.



1 Q All right.

2 A That would be prior to the arrest of Perkins and Roy.

3 Q Do you recall if those 'phone calls were made between the  
4 dates of May 1st, 1975, and July 18th, 1975?

5 A Some of them were, yes.

6 MRS. JACOBSON: Thank you. I think if you  
7 will step outside for a minute we will see if there are  
8 any questions.

9 (Witness excused at 11:20 A.M.)

10 \* \* \* \* \*

11 (Indictment presented to the Grand Jury at 11:22 A.M.  
12 and the Court Reporter and Mrs. Jacobson leave the  
13 room.)

14 (Court Reporter returns to room with Mrs. Jacobson.)

15 MRS. JACOBSON: Do you have something to  
16 report, Mr. Foreman?

17 A I do. We have found a true bill in the case of Robert  
18 Marchand with 21 Grand Jurors concurring.

19 MRS. JACOBSON: Thank you very much.  
20  
21  
22  
23  
24  
25



STATE OF VERMONT

COUNTY OF RUTLAND, SS

I, SUSAN BLODGETT, Court Reporter and Notary Public,  
certify that the foregoing is a verbatim transcript of the  
stenographic notes taken by me of the proceedings before the  
Grand Jury held at the United States Courthouse, Burlington,  
Vermont, on Thursday, July 22, 1976.

Susan Blodgett  
Notary Public

7-13-76  
Date

My commission expires February 10, 1979.

*Susan Blodgett & Associates*  
Court and Deposition Reporters  
Manchester Center, Vermont 05255  
(802) 362-3084

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